

~~1407~~ United States. 1401

# Circuit Court of Appeals

For the Ninth Circuit.

CHARLES H. PRAY,

Appellant,

vs.


W. B. COPEs and J. E. HILL, Doing Business Under the Fictitious Firm Name of TRIANGLE IRON WORKS, and M. J. FITZGERALD and W. A. SAMSON, Doing Business Under the Fictitious Firm Name of NATIONAL FIRE ESCAPE LADDER COMPANY,

Appellees.

## Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

FILED  
SEP 19 1924  
F. D. MONKTON  
CLERK



Digitized by the Internet Archive  
in 2010 with funding from  
Public.Resource.Org and Law.Gov

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

CHARLES H. PRAY,

Appellant,

vs.

W. B. COPES and J. E. HILL, Doing Business  
Under the Fictitious Firm Name of TRI-  
ANGLE IRON WORKS, and M. J. FITZ-  
GERALD and W. A. SAMSON, Doing Busi-  
ness Under the Fictitious Firm Name of  
NATIONAL FIRE ESCAPE LADDER  
COMPANY,

Appellees.

---

Transcript of Record.

---

Upon Appeal from the United States District Court for the  
Southern District of California, Southern Division.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of J. Calvin Brown.....	3
Affidavit of Service.....	47
Affidavit on Motion to Set Aside Decree.....	24
Alias Citation.....	1
Amended Answer.....	50
Answer.....	12
Answer.....	55
Assignment of Errors.....	93
Bill in Equity for Accounting and Injunction..	5
Bond on Appeal.....	101
Certificate of Clerk U. S. District Court to Transcript of Record.....	109
<b>EXHIBITS:</b>	
Exhibit "A" Attached to Affidavit on Mo- tion to Set Aside Decree—Photograph	33
Exhibit "B" Attached to Affidavit on Mo- tion to Set Aside Decree—Photograph	34
Final Decree Dismissing Bill of Complaint....	91
Interlocutory Decree.....	20
Memorandum Opinion.....	38
Minutes of Court—April 10, 1922—Order Denying Motion to Strike.....	18

Index.	Page
Minutes of Court—January 26, 1923—Order Vacating Interlocutory Decree, etc.....	37
Minutes of Court—February 19, 1923—Order Denying Motion.....	49
Motion and Notice Thereof.....	16
Motion and Notice Thereof.....	19
Names and Addresses of Attorneys of Record.	1
Notice of Motion to Vacate the Decree.....	35
Notice of Petition.....	41
Order Allowing Appeal.....	99
Order Denying Motion.....	49
Order Denying Motion to Strike.....	18
Order Extending Time to and Including No- vember 20, 1923, to File Record and Docket Cause.....	118
Order Extending Time to and Including No- vember 20, 1923, to File Record and Docket Cause.....	119
Order Extending Time to and Including De- cember 20, 1923, to File Record and Docket Cause.....	116
Order Extending Time to and Including Janu- ary 20, 1924, to File Record and Docket Cause.....	115
Order Extending Time to and Including March 20, 1924, to File Record and Docket Cause.	114
Order Extending Time to and Including June 20, 1924, to File Record and Docket Cause.	113
Order Extending Time to and Including July 15, 1924, to File Record and Docket Cause.	112

Index.	Page
Order Re Modification of Stipulation Re Transcript of Record.....	104
Order Setting Aside Interlocutory Decree.....	40
Order Vacating Interlocutory Decree, etc.....	37
Petition for Order Allowing Appeal.....	98
Petition for Rehearing of Defendant's Petition to Vacate and Set Aside Interlocutory Decree and Permit Defendants to File an Amended Answer and Strike Out Answers to Interrogatories Propounded by Plaintiff, etc.....	42
Stipulation Re Transcript of Record.....	106
Testimony and Proceedings on Rehearing (July 12, 1923).....	66
Testimony and Proceedings on Trial and Rehearing.....	60
Testimony and Proceedings on Trial and Rehearing. (July 18, 1922).....	61
<b>TESTIMONY ON BEHALF OF PLAINTIFF:</b>	
ROBINSON, ROBERT R.....	70
Cross-examination.....	72
Redirect Examination.....	77
<b>TESTIMONY ON BEHALF OF DEFENDANTS:</b>	
COPESE, WILSON B.....	83
Cross-examination.....	86
SAMSON, WILLIAM A.....	87





NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

For Appellant:

RAYMOND IVES BLAKESLEE and  
J. CALVIN BROWN, 727-30 California  
Building, Los Angeles, California.

For Appellee:

GEORGE E. HARPHAM, Bryne Building,  
Los Angeles, California,  
DOUGLAS L. EDMONDS, Stock Exchange  
Building, Los Angeles, California.

---

In the United States District Court, Southern Dis-  
trict of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

ALIAS CITATION.

United States of America,  
Ninth Judicial Circuit,—ss.

To W. C. Copes and J. E. Hill, Doing Business  
Under the Fictitious Firm Name of Triangle  
Iron Works, and M. J. Fitzgerald and W. A.  
Samson Doing Business Under the Fictitious  
Firm name of National Fire Escape Ladder  
Company, GREETING:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said Circuit, on the 20th day of October, 1923, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the Southern District of California, Southern Division, Ninth Judicial Circuit, in that certain suit in equity No. F-89, wherein you and each of you are defendants and appellees, and Charles H. Pray is complainant and appellant, to show cause, if any there be, why the order or decree entered in this cause in said District Court on the 23d day of July, 1923, against appellant, and mentioned in said appeal, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. WILLIAM P. JAMES, United States District Judge for the Southern District of California, Ninth Judicial Circuit, this 25 day of September, 1923.

WM. P. JAMES,  
U. S. District Judge, S. D. C. S. D.

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPEs et al.,

Defendants.

State of California,

County of Los Angeles,—ss.

AFFIDAVIT OF J. CALVIN BROWN.

J. Calvin Brown being first duly sworn according to law, says: That he is a member of the law firm of Blakeslee & Brown, and one of the solicitors and counsel for plaintiff above named; that on September 26th, 1923, he called at the office of George E. Harpham, Esq., solicitor for defendants Samson and Fitzgerald in the above-entitled cause, in the Bryne Building, Los Angeles, California, and there left on the desk of said Harpham, at the direction of a person known by affiant to be in charge of said office, a true and correct copy of the original *alias* citation attached hereto; that afterwards affiant went to the office of Douglas L. Edmonds, attorney for defendants Copes and Hill, Stock Exchange Building, Los Angeles, California, and served upon said Edmonds a true and correct copy of the *alias* citation, at the same time exhibiting to him the original *alias* citation. Further deponent saith not.

J. CALVIN BROWN.



BILL IN EQUITY FOR ACCOUNTING AND  
INJUNCTION.

Charles Henry Pray, a citizen of the United States, and of the State of California, complainant, brings this, his bill of complaint against all of the above-named defendants, residents of the Southern District of California, Southern Division, and there-upon your complainant complains and says:

I.

That the defendant, Byron Jackson Iron Works now is, and, at all times herein mentioned, was, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California; and that the defendants, W. B. Copes and J. E. Hill now are, and, at all times herein mentioned, have been doing business under the fictitious firm name of Triangle Iron Works; and that the defendants John Doe and Richard Roe now are, and, at all times herein mentioned have been doing business under the fictitious firm name of National Fire Escape Ladder Company.

II.

That heretofore, to wit, on the 15th day of June, 1920, complainant was the original and first inventor of a [1\*] certain new and useful invention entitled, "Fire Escapes," a more particular description of which will be found in the letters patent hereinafter referred to and to which special

---

\*Page-number appearing at foot of page of original certified Transcript of Record.

reference is hereby made, and in which letters patent are contained the following claims, to wit:

1. A fire escape comprising two relatively spaced stationary platforms and an intermediate stationary vertical ladder, a slidable ground ladder, means for retaining said ground ladder, in close sliding engagement with the stationary ladder, counterbalance means connected to the ground ladder, and manually operated means normally supporting the ground ladder in elevated position.

2. A fire escape comprising two relatively spaced platforms and an intermediate stationary vertical ladder, vertical guide rods intermediate of and secured to the platforms, a counterbalance weight slidable on said rods, a ground ladder, means retaining the ground ladder in close sliding contact with the stationary ladder, cable sheaves journaled on the upper platform, cables secured to the weight and to the ground ladder and passing over the sheaves, and means carried by the lower platform for normally supporting the ground ladder in elevated position and movable to release said ladder.

3. A fire escape comprising an upper and a lower platform having relatively alined open hatchways, the lower platform having opposed vertical grooves, a vertical stationary ladder secured at opposite ends to the upper and lower platform respectively, a vertically movable ground ladder slidable in said grooves, means for guiding the upper end of the ground ladder relative to the stationary ladder, counterbalance means connected to the ground ladder and a horizontally movable

latch normally closing the bottom of one groove and forming a supporting abutment for the ground ladder.

4. A fire escape comprising an upper and a lower platform having relatively alined open hatchways, the lower platform having opposed vertical grooves adjacent the hatchway, an intermediate stationary ladder, the upper ends of the side rails of said ladder being secured to the upper platform and the lower ends of said side rails secured to the lower platform adjacent the vertical grooves, a ground ladder slidable in said grooves, counter-balance means connected to the ground ladder and manually operated means normally closing the lower end of one of the grooves and supporting the ground ladder in elevated position.

### III.

That the same was a new and useful invention not known or used by others in this country, not patented, not described in any particular publication in this or any foreign country [2] before the invention thereof by your complainant, and, at the time of his application for a patent therefor, as hereinafter alleged, the same had not been in public use, nor on sale, in the United States more than two years, nor had the same been abandoned.

### IV.

That thereafter, to wit, on September 4th, 1919, your complainant duly and regularly filed in the patent office of the United States an application praying for the issuance to him of letters patent of the United States for said invention, and after

proceedings duly and regularly had and taken in the matter, to wit, June 15th, 1920, letters patent of the United States bearing date on that day and numbered 1,343,642, were granted, issued and delivered to your complainant, whereby there was granted to him, his heirs and assigns for the full term of seventeen years from said last-named date, the sole and exclusive right to make, use and vend the said invention throughout the United States and the territories thereof. Said letters patent were issued in due form of law under the seal of the patent office of the United States, signed by the Acting Commissioner of Patents, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

#### V.

That since the issuance of said letters patent, complainant has been and is now the sole owner and holder thereof, and has practiced the invention described therein, and has used large numbers of said fire escapes thereby giving notice to the public at large that the device was covered by said letters patent.

#### VI.

That the names of the defendants herein designated as John Doe, Richard Roe, Sam Hill, James Doe and Mary Roe are [3] fictitious, but are jointly connected and associated with the other defendants in operating and embracing the invention patented in and by said letters patent, and all of the herein



defendants are engaged in manufacturing, using and vending said patented invention and the fire escapes so manufactured, used and sold by said defendants are an infringement of said letters patent.

#### VII.

That notwithstanding the premises, but well knowing the same, and without the license or consent of your complainant, within one year last past, and in the Southern District of California, Southern Division, the defendants herein have jointly manufactured, used and sold large numbers of fire escapes containing and embracing the invention described and patented in and by said letters patent and the claims thereof, and have infringed upon the exclusive rights secured to your claimant by said claims; that your complainant has requested the defendants to cease and desist from infringing upon said letters patent, but the fact is, nevertheless, that the said defendants have failed, neglected and refused to comply with such request and are now still manufacturing, using and selling said patented invention and threaten to so manufacture, use and sell them, and, unless restrained by this court will continue to so manufacture, use and sell the same.

#### VIII.

That by reason of the premises your complainant has suffered great and irreparable injury and damage, and he avers, upon information and belief, that the defendants have realized large profits and gains in the sum of fifteen thousand (\$15,000) dollars.

That for the wrongs and injuries herein complained of your complainant has no plain, speedy or adequate remedy at law. [4]

WHEREFORE, complainant prays:

First. That said defendant may be decreed to account for and pay over to your complainant the gains and profits realized by said defendants from their unlawful use and practice of the invention patented in and by said letters patent, and, in addition to the profits to be accounted for, as aforesaid, the damages sustained by your complainant, together with the costs of suit;

Second. That a writ of injunction issue out of and under the seal of this court, provisionally, and until the final hearing, enjoining and restraining the said defendants, their clerks, employees, agents and attorneys from making, using and selling any fire escape containing and embodying the invention patented in and by said claims 1, 2, 3 and 4, or either or any of them, and that, upon the final hearing of the case said injunction be made permanent; and

Third. That complainant be given such other and further relief as the nature of the case may require and as may seem meet and proper in accordance with equity.

STEPHEN MONTELEONE,

Solicitor for Complainant.

United States of America,  
Southern District of California,  
County of Los Angeles,—ss.

Charles Henry Pray being duly sworn, deposes

and says that he is the complainant in the within action; that he has read the above and foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and, as to those matters, that he believes it to be true.

CHARLES HENRY PRAY.

Subscribed and sworn to before me this 18th day of January, 1922.

[Seal] MAI FIELD DOUGLAS,  
Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires Dec. 13, 1925. [5]

Endorsed]: F.-89—Equity. In the District Court of the United States in and for the Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes, et al., Defendants. Bill in Equity for Accounting and Injunction. Filed Jan. 20, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Stephen Monteleone, 806 Security Building, 5th and Spring Streets, Los Angeles, Phone: Main 5722. [6]

In the District Court of the United States in and for the Southern District of California, Southern Division.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEs and J. E. HILL, Doing Business Under the Fictitious Firm Name of TRIANGLE IRON WORKS, TRIANGEL IRON WORKS, JOHN DOE and RICHARD ROE, Doing Business Under the Fictitious Firm Name of NATIONAL FIRE ESCAPE LADDER COMPANY, BYRON JACKSON IRON WORKS, a Corporation, SAM HILL, JAMES DOE and MARY ROE,

Defendants.

ANSWER.

Now comes the defendants W. B. Copes and J. E. Hill, doing business under the ficticious firm name of Triangle Iron Works, Triangle Iron Works, W. A. Samson and John Fitzgerald, doing business under the fictitious firm name of National Fire Escape Ladder Company, and for answer to the bill in equity for accounting and injunction filed by complaint herein against these defendants, and others, deny and alleges:

I.

Deny that on the 15th of June, 1920, or at any

time, or at all, complainant was the original or first inventor of a certain new or useful invention entitled "Fire Escapes," more particularly described in the complainant's bill of equity on file herein.

## II.

Deny that the same was a new or useful invention not known or used by others in this country before the invention thereof by your complainant, and deny that at the time of the application for patent therefor, as hereinafter alleged, the same [7] had not been in public use, or on sale, in the United States for more than two years prior thereto, or that it had not been abandoned.

## III.

Defendants have not sufficient information or belief to enable them to answer the allegations of paragraph IV of complainant's bill of equity, and on that ground deny that said letters of patent were issued in due form of law under the seal of the patent office of the United States, signed by the Acting Commissioner of Patents or prior to the issuance thereof all proceedings were had or taken which were required by law to be had or taken prior to the issuance of letters patent for new or useful inventions, or at all.

## IV.

Deny that these defendants are jointly connected or associated with each other or the other defendants in operating or embracing the invention patented in or by said letters patent, and deny that they are engaged in manufacturing or using or

vending said patented invention or the fire escapes so manufactured or used or sold by defendants are an infringement of said letters patent, or at all.

## V.

Deny that within one year last past, in the Southern District of California, Southern Division, or at all, these defendants have jointly manufactured, used and sold or jointly manufactured or used or sold large numbers of fire escapes containing or embracing the invention described or patented in or by said letters patent or the claims thereof, and deny that they have infringed upon the alleged exclusive rights secured by complainant by said claims; deny that complainant has requested defendants to cease or desist from infringing upon said letters patent; deny that defendants are still manufacturing, using and selling [8] or manufacturing or using or selling said patented invention, and deny that they threaten to so manufacture, use and sell or manufacture or use or sell them, and deny that unless restrained by the Court they will continue to so manufacture or use or sell them.

## VI.

Deny that complainant has suffered great and irreparable or great or irreparable injury and damage or injury or damage, and deny that defendants have realized large profits and gains, or large profits or gains in the sum of \$15,000, or any sum, or at all.

WHEREFORE, these defendants pray that the complainant's bill in equity be dismissed, for their

costs herein, and for such other and further relief as may be meet and just.

DAN V. NOLAND,  
Attorney for Said Defendants.

United States of America,  
Southern District of California,  
County of Los Angeles,—ss.

W. A. Samson, being first duly sworn, deposes and says: that he is one of the defendants in the within action; that he has read the above and foregoing answer, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his information or belief, and as to those matters, that he believes it to be true.

W. A. SAMSON.

Subscribed and sworn to before me this 27th day of February, 1922.

[Seal] ALFREDA M. DAIMLER,  
Notary Public in and for the County of Los Angeles, State of California.

Received copy of the within answer this 27th day of February, 1922.

STEPHEN MONTELEONE,

By D. H. C.

Attorney for Plaintiff. [9]

[Endorsed]: Original No. F.-89—Equity. In the United States District Court in and for the Southern District of California, Southern Division. Charles Henry Pray, Complainant, vs. W. B. Copes, et al., Defendants. Answer. Filed Feb. 27,

1922. Chas. N. Williams, Clerk. By L. J. Cordes, Deputy Clerk. Dan V. Noland, Union Oil Building, Los Angeles, Cal. [10]

---

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEs and J. E. HILL, etc., et al.,

Defendants.

#### MOTION AND NOTICE THEREOF.

Please take notice that on Monday, April 10, 1922, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, and in the courtroom of this court usually occupied by the Honorable Benjamin F. Bledsoe, a judge thereof, in the Federal Building, Los Angeles, California, the plaintiff will move this Honorable Court for an order striking out the answer of defendants, pursuant to Equity Rule 58, and the provisions thereof pertinent to the order made and filed March 15, 1922, requiring defendants to answer certain interrogatories pursuant to said Equity Rule 58.

This motion will be based upon said Equity Rule 58 and the papers, files, documents and proceedings in this cause.



To DAN V. NOLAND, Esq., Solicitor for Defendants.

Dated Los Angeles, Cal., April 4, 1922.

RAYMOND IVES BLAKESLEE,

---

Solicitors and Counsel for Plaintiff.

[Endorsed]: In Equity—No. F.-89. In the United States District Court Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes and J. E. Hill, etc., et al., Defendants. Motion and Notice Thereof. Received copy of within notice this 4th day of April, 1922. Dan V. Noland, Attorney for Defts. Filed Apr. 5, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Plaintiff. [11]

---

At a stated term, to wit: the January, A. D. 1922, Term, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Monday, the tenth day of April, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. F.-89—Eq.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPES and J. E. Hill, etc.,

Defendants.

## MINUTES OF COURT—APRIL 10, 1922—ORDER DENYING MOTION TO STRIKE.

This cause coming on at this time for hearing on motion to strike answer; J. Calvin Brown, Esq., appearing as counsel for the plaintiff and V. H. Koenig, Esq., appearing as counsel for the defendant and J. Calvin Brown, Esq., having made a statement in support of motion to strike and said V. H. Koenig, Esq., having made a statement in opposition thereto, it is by the Court ordered that said motion be and the same is hereby dismissed.

[12]

---

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

MOTION AND NOTICE THEREOF.

Please take notice that on Monday, April 24, 1922, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, and in the courtroom of this court usually occupied by the Hon. Benjamin F. Bledsoe, a judge of this court, in the Federal Building, Los Angeles, California, or at such other time and place as may be assigned for that purpose, plaintiff will move this Honorable Court for an order compelling defendants and each of same, to fully and particularly and specifically and properly answer interrogatories herein previously propounded to them and each of them under and pursuant to the order of this Court.

This motion is presented pursuant to Equity Rule 58 and is based upon the interrogatories heretofore propounded by plaintiff to defendants, the order of the Court and the answers of defendants, or purported answers of defendants filed herein by defendants and alleged to be responsive to such interrogatories.

This motion is also based upon the papers, files, records and proceedings heretofore taken and had and on file in this cause.

As authorities on this motion plaintiff relies upon the prior rulings of this Court as in *Wilson vs. Union Tool Co.*, 275 Fed. 624, and *Quirk vs. Quirk*, 259 Fed. 597.

To Defendants W. B. COPEs et al., and Their Solicitor and Counsel, VICTOR H. KOENIG.

Dated Apr. 18, 1922.

RAYMOND IVES BLAKESLEE,  
J. CALVIN BROWN,  
Solicitors and Counsel for Plaintiff. [13]

[Endorsed]. In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Motion and Notice Thereof. Received copy of within notice this 18th day of April, 1922. Victor H. Koenig, Attorney for Defts. Filed Apr. 19, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., and J. Calvin Brown, Solicitors for Plaintiff. [14]

---

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,  
Complainant,  
vs.  
W. B. COPEs, J. E. HILL, etc, et al.,  
Defendants.

INTERLOCUTORY DECREE.

This cause having come on to be heard and having been argued by counsel; now, therefore, upon

consideration thereof, it is hereby ORDERED, ADJUDGED AND DECREED, as follows, viz.:

I.

That United States letters patent No. 1,343,642, issued June 15, 1920, to Charles Henry Pray, are good and valid in law as to each and all of the claims thereof.

II.

That the plaintiff is the owner of said letters patent.

III.

That the defendants have infringed each of the claims of said letters patent, to wit: Claims 1, 2, 3 and 4 thereof, by making, using and selling devices as admitted, specified and set forth and shown in defendants' answer to interrogatories propounded by plaintiff, and each and all of such answers, and blue-print referred to in such answers, all on file herein.

IV.

That an injunction be issued against defendants W. B. Copes and J. E. Hill, doing business under the fictitious firm name of Triangle Iron Works, and M. J. Fitzgerald and W. A. Samson, doing business under the fictitious firm name of National Fire Escape Ladder Company, perpetually enjoining and restraining them, their officers, directors, agents, attorneys, workmen, [15] servants, employees and associates, and each and every of them, from hereafter making or causing to be made, selling or causing to be sold, using or causing to be used, in any manner, directly or indirectly,

or contributorily, any device like those admitted, specified and set forth and shown in defendants' answers to interrogatories propounded by plaintiff, and each and all of such answers, and blue-print referred to in such answers, all on file herein; or any device or mechanism containing or embodying the invention patented in or by claims 1, 2, 3 and 4, or either thereof of said letters patent, or any device capable of being used in infringement thereof, and from directly or indirectly infringing upon either or any of claims 1, 2, 3 and 4 of said letters patent in any manner whatsoever.

## V.

That plaintiff recover from defendants W. B. Copes and J. E. Hill, doing business under the fictitious firm name of Triangle Iron Works, and from M. J. Fitzgerald and W. A. Samson doing business under the fictitious firm name of National Fire Escape Ladder Company, and each of them, the profits and damages received from and caused by said defendants' infringement of said letters patent.

## VI.

That an accounting be had to determine the profits and damages received from and caused by such infringements by said defendants.

## VII.

That this cause be referred to Chas. C. Montgomery, Esq., as Master *pro hac vice* to ascertain such profits and damages and report the same to the Court; and that the matter of increased damages be deferred until after the Master's report is returned. [16]

VIII.

That plaintiff have and recover judgment against defendants W. B. Copes and J. E. Hill, doing business under the fictitious firm name of Triangle Iron Works, and M. J. Fitzgerald and W. A. Samson, doing business under the fictitious firm name of National Fire Escape Ladder Company, and each of them, for the sum of \$27.55, plaintiff's costs and disbursements herein.

Dated July 18th, 1922.

BENJAMIN F. BLEDSOE,  
U. S. District Judge.

Approved as to form pursuant to Court Rule 45.

---

VICTOR H. KOENIG,  
Solicitors for Defendants.

Decree entered and recorded July 18th, 1922.

CHAS. N. WILLIAMS,  
Clerk.

By Douglas Van Dyke,  
Deputy Clerk.

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. COPES, J. E. Hill, etc., et al., Defendants. Interlocutory Decree. Filed Jul. 18, 1922. Chas. N. Williams, Clerk. By Douglas Van Dyke. J. Calvin Brown, Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitors for Plaintiff. 11/181. [17]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.—89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES and J. E. HILL, Doing Business Under the Fictitious Firm Name of TRIANGLE IRON WORKS, M. J. FITZGERALD and W. A. SAMSON, Doing Business Under the Fictitious Firm Name of NATIONAL FIRE ESCAPE LADDER COMPANY,

Defendants.

AFFIDAVIT ON MOTION TO SET ASIDE DECREE.

To the Honorable B. F. BLEDSOE, Judge of said court:

The petition of W. A. Samson and M. J. Fitzgerald by G. E. Harpham, their attorney, and W. B. Copes and J. E. Hill by Douglas L. Edmonds, their attorney, respectfully asks that the interlocutory decree entered in the above-entitled action on July 18, 1922, be vacated and set aside and a rehearing granted herein and that they be permitted to withdraw their answers to plaintiff's interrogatories, and that they be permitted to file amended answers to the end that justice be done between plaintiff and defendants.



In that behalf these defendants say that after they were served with process in this action they consulted together and intrusted the matter of the defense of the action to defendant W. A. Samson; that none of the defendants were acquainted with patent law or what was necessary to do to present their defense in the action; that W. A. Samson employed Victor H. Koenig, a general practitioner, to represent them in the action and to prepare their answers and such other papers and pleadings as were necessary to properly present their defense in the action.

That said Victor H. Koenig had acted as attorney for said W. A. Samson in an action in the state courts with success and these defendants believed he could and would present their [18] defense to this action in a proper manner and to the end that the Court should be fully advised as to the rights and liabilities of the parties; that said Victor H. Koenig told these defendants that he would procure the assistance of R. S. Berry, who was reputed to be skilled in patent law, in preparing the answer and such other papers as were required.

That they trusted to said Koenig to see that the answer of these defendants was properly prepared and presented all the matters that were required to be stated therein, to properly plead their defense to the action.

That they furnished said Koenig with blue-prints of the construction of the ladder which these defendants made and installed and sold for use in fire

escapes and endeavored to explain the same to said Koenig and thought they had done so, and that said Koenig understood the construction and use of the ladder until after the trial of the action and after the rendition of the judgment; that from the manner that said Koenig conducted the trial of the action, these defendants became convinced that he did not understand the action and that their defense had not been properly presented and were then informed that said Berry had not been consulted. Said Samson then employed G. E. Harpham on behalf of the defendants Samson and Fitzgerald and said Copes and Hill employed Douglas L. Edmonds to represent them.

That said Harpham has been an attorney at law, duly licensed to practice his profession in all the courts of California, both State and Federal, for more than forty years and has had considerable practice in the Federal Courts of California in patent litigation; that said Harpham examined the papers, records and files in this action and the ladder which these defendants made and installed in fire escapes and after such examination, informed these defendants that their answer was not full enough to properly present to the court their defense to the action; that their answer should have set out the prior art as to fire [19] escapes so as to restrict plaintiff to the exact structure of his patent and if that had been done, the court would not have found that the ladder made by defendants and installed in fire escapes was an infringement of plaintiff's patent.

Said Harpham also informed defendants that certain portions of their answers to interrogatories three and nine were not correct; that the defendants had admitted the use of certain things in said answers which they had not used and that the ladder which these defendants had made and sold did not come within the claims of plaintiff's patent; that said Harpham then took a copy of plaintiff's patent and went over the claims thereof in front of a fire escape in which a ladder made and sold by defendants was installed and pointed out wherein such ladder was not covered by said claims.

These defendants now state that those portions of their answers to plaintiff's interrogatories which state that the ladders which they made and sold are in all respects similar, except in certain particulars set forth, with the ladder described in interrogatory three, are incorrect and were made inadvertently and under advice of counsel, who it now appears did not understand the construction of the ladders involved; that their answers to paragraphs a, b, c, d and g should have been "no" instead of "yes" for the same reason; that these defendants, or any of them, never constructed or used or sold any fire escapes having a second and third floor platform with a permanent connecting ladder between the same; that these defendants, or any of them, never constructed any platforms or permanent ladders for use in a fire escape, nor any ground ladder for use in a fire escape that was slidable upon a permanent ladder; that their answers to plaintiff's interrogatories were put in by said Koe-

nig under a misunderstanding of the construction of the ladder made and sold by these defendants and under a misunderstanding of what these defendants did in relation to fire escape construction. [20]

In that behalf, these defendants say they have never built, or had built for them, any second and third story platforms with a permanent ladder extending from one to the other; that they have never made or installed any movable ground ladder which was held in sliding contact or engagement, or any contact or engagement, with the permanent ladder which in fire escapes extends from the second to the third story platform.

That the only thing that these defendants, or any of them, have ever done in relation to fire escapes is as follows:

In the construction of buildings in the city of Los Angeles certain buildings have been constructed by the owners thereof which, by the ordinances of the city of Los Angeles, were required to be equipped with fire escapes; that the owners of such buildings, when the same were constructed and as a part thereof, built platforms at each floor from the second story up and provided permanent ladders extending from platform to platform; that all these defendants, or any of them did was to provide a movable ladder that was held above the ground and which could be lowered to the ground in case of a fire in the building and on which persons could descend from the second story platform to the ground on such ladder, which ladders are called movable ground ladders; that in the making and

installation of the ground ladders made and sold and installed by defendants for the owners of buildings having platforms at each floor above the ground, these defendants did not use or sell or install any ground ladders which had a sliding or any other engagement with the permanent ladder which extends from the second to the third platforms; that the ground ladder made and sold and installed by the defendants was in sliding contact with a guide that was attached to the second and third platforms, as described in U. S. letters patent No. 1,140,708, issued to Julius Pauly May 25, 1915, a copy of which will be produced on the hearing; except that there are some slight differences in the form of guide and the attachment of the ladder to the guide; defendants further say that a sliding engagement of the ground ladder upon the permanent ladder which [21] extends from the second to the third balcony is illustrated and partly described at page 37 in the catalogue of the F. P. Smith Wire and Iron Works, published at Chicago, Illinois, in the year 1915, which catalogue, as these defendants are informed and believe, had and has a large circulation in the United States ever since the year 1915, and was copyrighted in the year 1915, by F. P. Smith; and that such fire escapes have been made by the said F. P. Smith Wire and Iron Works for twenty-five years last past and have been in use in and about the city of Chicago during the same period of time.

That a photograph of the front of a building showing a fire escape located at No. 416 West

Fourth Street, Los Angeles, California, is hereto attached, marked Exhibit "A" and made a part hereof; that in said photograph the second story platform of the fire escape is marked "2" and the third story platform is marked "3"; the permanent ladder is marked "4"; the ground ladder is marked "5"; the ground ladder guide is marked "6." The ground ladder is shown in its elevated and inoperative position. Another photograph of the same front is hereto attached, marked Exhibit "B" and made a part hereof. In Exhibit "B" all the parts shown in Exhibit "A" are the same but the position of the ground ladder is shown in its operative position ready for use. Ground ladder "5" and its manner of attachment to guide "6," and of the attachment of guide "6," to platform "2" and "3" are correctly shown in said photographs.

The said photographs represent the only form of ground ladder and guide and the manner of the attachment of the ground ladder guide to the platforms of a fire escape ever made or sold by these defendants to anyone; that these defendants never made, either directly or indirectly, any platforms for fire escapes or any permanent ladders for fire escapes that extended from platform to platform.

That these defendants trusted solely to said Koenig to prepare their defense and did not know, until informed by said Harpham, that their answer was not full enough to properly present the defense of the prior art and did not know that certain portions of their answer to interrogatories three and nine were [22] not correct and that they had admitted

the use of certain elements which established plaintiff's allegation of infringement, and were surprised and dumbfounded when said Harpham explained the matter to them.

That if the decree of July 18, 1922, be set aside and their answers to the interrogatories be withdrawn and proper pleadings and testimony put in, these defendants are informed by their counsel and verily believe that the court will enter a judgment that the ladders made and sold and installed by these defendants are not an infringement of the patent sued on herein.

WHEREFORE these defendants pray that said decree of July 18, 1922, be set aside and the answers to the interrogatories heretofore filed herein, be withdrawn and that the case be reopened for further hearing and determination.

J. E. HILL.

W. B. COPES.

W. A. SAMSON.

G. E. HARPHAM,

Solicitor for Defendants Samson and Fitzgerald.

DOUGLAS L. EDMONDS,

Solicitor for Defendants Copes and Hill.

[23]

State of California,  
County of Los Angeles,—ss.

W. A. Samson, W. B. Coates and J. E. Hill, defendants in the above-entitled action, being first duly sworn, each for himself and not one for the other, says that he has heard read the foregoing

petition. That all the statements in said petition contained are true and correct to the best of the knowledge, information and belief of affiants. That said petition is not put in for delay.

J. E. HILL.

W. B. COPES.

W. A. SAMSON.

Subscribed and sworn to before me this 11th day of August, 1922.

[Seal]

DOUGLAS L. EDMONDS,  
Notary Public in and for the County of Los Angeles, State of California. [24]



EXHIBIT "A."





In the United States District Court, Southern District of California, Southern Division.

IN EQUITY.—No. F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES and J. E. HILL, Doing Business Under the Fictitious Firm Name of TRIANGLE IRON WORKS, M. J. FITZGERALD and W. A. SAMSON, Doing Business Under the Fictitious Firm Name of NATIONAL FIRE ESCAPE LADDER COMPANY,

Defendants.

NOTICE OF MOTION TO VACATE THE DECREE.

To the Said Plaintiff and to Messrs. Stephen Monteleone, Raymond Ives Blakeslee and J. Calvin Brown, His Solicitors:

All and each of you will please take notice that on Monday, September 4, 1922, upon the opening of court on said day, or as soon thereafter as counsel can be heard in the courtroom of the Honorable B. F. Bledsoe, counsel for defendants will bring the foregoing petition on for hearing and on said hearing will refer to and use the records, papers and files in said action, and the patents and catalogue referred to in said petition.

Dated August 11, 1922.

G. E. HARPHAM,  
Solicitor for Defendants Samson and Fitzgerald.  
DOUGLAS L. EDMONDS,  
Solicitor for Defendants Copes and Hill.

[Endorsed]: Original. F.-89—Equity. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Complainant, vs. W. B. Copes et al., Defendants. Notice of Motion to Vacate Decree and Affidavit thereon. Filed Aug. 14, 1922. Chas. N. Williams, Clerk. By L. J. Cordes. Received copy of the within this 14th day of August, 1922. Raymond Ives Blakeslee, J. Calvin Brown, Solicitors for Plaintiff. G. E. Harpham and Douglas L. Edmonds, 716 Van Nuys Building, Los Angeles, Cal. Telephones: 6080, Main 1936, Attorneys for Defendants. [25]

---

At a stated term, to wit, the January, A. D. 1923, term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 26th day of January, in the year of our Lord one thousand nine hundred and twenty-three. Present: the Honorable BENJAMIN F. BLEDSOE, District Judge.

No. F.-89—EQUITY, S. D.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPEs et al.,

Defendants.

MINUTES OF COURT—JANUARY 26, 1923—  
ORDER VACATING INTERLOCUTORY  
DECREE, ETC.

Good cause appearing therefor, it is by the Court ordered that upon payment of \$200.00 as terms to be made within ten days from date, an order will be made by the Court vacating the interlocutory decree heretofore entered herein, permitting defendants to file an amended answer setting up non-infringement and relieving them from the prejudicial admissions contained in the answers to the interrogatories on file. [26]

---

In the United States District Court, Southern District of California, Southern Division.

F.-89—EQUITY.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEs, J. E. HILL et al.,

Defendants.

Messrs. BLAKESLEE & BROWN of Los Angeles, Cal., Attorneys for Complainant.

G. E. HARPHAM, Esq., of Los Angeles, Cal., Attorney for Defendants.

### MEMORANDUM OPINION.

BLEDSON, District Judge.—This is a motion for a vacating of the interlocutory decree entered herein and the granting of a rehearing of the cause on the merits.

It is fairly clear from the papers presented by defendants that they employed an attorney to represent them at the hearing on the merits who possessed a woeful want of appreciation of the intricacies of patent law. Acting under his advice, it seems clear that defendants were misled to their prejudice in the matter of the preparation of their defenses. It is equally clear from an inspection of plaintiff's patent, the device of which must be limited to a sliding ladder operated in conjunction with or at least in the immediate vicinity of a fixed ladder, that defendants' device does not infringe upon plaintiff's patent. This was not made to appear at the hearing and on the contrary seemingly was foreclosed from consideration by the court if it had been presented, by the nature of defendants' answers to interrogatories.

On that basis an injustice has been done due to the ineptitude of defendants' counsel. Seasonable application for relief having been made, it would seem proper that the court should grant a rehearing in order that justice may be done. The

defendants, however, because of the negligence or ignorance of their own agent, their counsel, are responsible for the present situation [27] and they should be permitted relief only in the event of the payment of terms.

Upon the payment, therefore, of the sum of two hundred dollars as terms, an order will be made by the Court vacating the interlocutory decree heretofore entered herein and permitting defendants to file an amended answer and relieving them from the prejudicial admissions contained in the answers to the interrogatories on file.

January 26, 1923.

[Endorsed]: No. F.-89—Eq. U. S. District Court, Southern District of California. Charles Henry Pray vs. W. B. Copes, J. E. Hill, et al. Opinion of Court on Rehearing. Filed Jan. 26, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. [28]

---

In the District Court of the United States Southern  
District of California, Southern Division.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

**ORDER SETTING ASIDE INTERLOCUTORY  
DECREE.**

The defendants having paid to Messrs. Blakeslee and Brown, as solicitors for the plaintiff in the above-entitled action, the sum of Two Hundred (\$200.00) Dollars as terms imposed in an order made herein on the 26th day of January, 1923, and having filed the receipt for said payment herewith,

IT IS ORDERED that the interlocutory decree heretofore made herein on the 18th day of July, 1922, be vacated, and that the defendants be permitted to file amended answers within ten days from this date and that said defendants be relieved from the prejudicial admissions contained in the answers to the interrogatories heretofore filed herein and be permitted to withdraw said answers and to file amended answers to said interrogatories.

Dated: February 5th, 1923.

BLEDSOE,  
United States District Judge.

[Endorsed]: No. F.-89. In the District Court of the United States, Southern District of California, Southern Division. Charles Henry Pray, Complainant, vs. W. B. Copes, et al., Defendant. Order vacating injunction and setting aside decree. Filed Feb. 5, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith. Douglas L. Edmonds, 716 Van Nuys Building, Los Angeles, Cal. Telephones 60580 Main 1963, Attorney for Defendants. EOBk 3/65. [29]



In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPES et al.,

Defendants.

NOTICE OF PETITION.

To defendants in the above-entitled cause, and their solicitors and counsel George E. Harpham and Douglas L. Edmonds, Esqrs.:

Please take notice that on Monday, the 19th day of February, 1923, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, plaintiff will present to this Honorable Court the annexed petition for rehearing, etc., at the courtroom of this Court usually occupied by the Honorable Benjamin F. Bledsoe, in the Federal Building, Los Angeles, California.

RAYMOND IVES BLAKESLEE.

J. CALVIN BROWN.

Dated Los Angeles, Cal., Feb. 13, 1923. [30]

In the United States District Court, Southern  
District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPES et al.,

Defendants.

PETITION FOR REHEARING OF DEFEND-  
ANT'S PETITION TO VACATE AND SET  
ASIDE INTERLOCUTORY DECREE AND  
PERMIT DEFENDANTS TO FILE AN  
AMENDED ANSWER AND STRIKE OUT  
ANSWERS TO INTERROGATORIES PRO-  
POUNDED BY PLAINTIFF, ETC.

Now comes plaintiff hereinabove named by counsel and petitions this Court for a rehearing in the matter of defendants' heretofore presented and argued petition to vacate and set aside the interlocutory decree herein and strike out answers to the interrogatories heretofore propounded by plaintiff, and permit amended answers, and plaintiff further petitions for an order vacating and setting aside the order of this Court heretofore entered granting defendants' said petition.

Plaintiff further petitions for an order permitting plaintiff, upon the granting of the relief herein petition for, to return to the defendants

Copes and Hill the sum of two hundred dollars (\$200.00) heretofore paid by said defendants to plaintiff as terms in accordance with the said order of the Court heretofore made and entered on said petition to plaintiff.

This present petition is based upon the papers, proceedings, proofs, evidence, records, decree and order heretofore had, made and now on file in this cause, upon Federal Equity Rule 19 and the other pertinent equity rules, the statutes of the United States and the discretionary powers of this Court, and more particularly upon the following grounds and authorities, and the annexed transcript of a portion of the testimony heretofore taken in the accounting ordered in this matter: [31]

(a) That defendants answered said interrogatories of plaintiff of their own volition and as their own acts, and with a full understanding of said interrogatories, and answered same in accordance with the facts as shown by the papers on file herein, disclosing the structure to build and install only which certain of said defendants were given permission by the authorities of the city of Los Angeles, and as further shown by the photographs and affidavits on file indicating the construction with which the Times Building of Los Angeles, California, is equipped.

(b) That defendants' affidavits and photographs filed and presented on said petition of defendants were clearly erroneous and untrue.

(c) That defendants accompanied their said interrogatory answers with a blue-print on file

clearly indicating by the "rungs" the rungs or steps of both the fixed and ground ladders which they admitted having made and installed, and that the presence of any one or more of such rungs completes the structure to the extent that it falls within the definition of a ladder.

(d) That the defendants admit in their interrogatory answers their clear understanding of the interrogatories and the structures involved therein by their recitals as to the alleged antiquity in various structural parts disclosed in the patent in suit.

(e) That whether or not the first counsel employed by defendants and who tried this cause was capable or incapable of comprehending and presenting, and adducing proof with respect to the issues of, this cause, is entirely irrelevant and immaterial, and devoid of weight on issues presented in this cause or for any reason offered in the memorandum of this Court on the motion of defendants, inasmuch as defendants were foreclosed by their interrogatory answers from adducing any proofs at the trial available to defendants, unless it were to totally anticipate [32] the patent in suit, and that new counsel for defendants have entirely waived this ground of defense by admitting on arguing and briefing the said petition that defendants waived the grounds of newly discovered evidence.

(f) That the said memorandum opinion of this Honorable Court on said petition of plaintiff is prejudicial to a rehearing of this cause in the observation that it is clear that defendants' device

does not infringe upon plaintiff's patent, such a finding by this Court in advance of the rehearing being in effect indicative of the purpose of the Court to enter an order and decree or order judgment herein *non obstante veredicto* against the rule of Foster's Federal Practice Vol. III, Sec. 478, page 2474, and *Slocum vs. N. Y. Life Ins. Co.*, 228 U. S. 364.

(g) That within the Code of Civil Procedure of this State, Sec. 657, and within the Federal Equity Practice, as indicated by Walker on Patents, Secs. 645, 646 and 647, Fifth edition, the said memorandum opinion of the Court and order made and entered thereon do not follow and are not based upon the required grounds to be presented for a rehearing.

(h) That inasmuch as plaintiff cannot immediately appeal from the said order of the Court on said defendants' petition, the same being discretionary and not a final order, or at least inasmuch as no appeal involving such order can eventually be taken until a further interlocutory decree has been made and entered in this cause, the present petition is presented in order that, if defendants be so advised, application may be made to the Honorable Circuit Court of Appeals of this Ninth Circuit for a writ of prohibition directed against the carrying into effect of said order on said plaintiff's petition.

(i) That the said order of this court on said petition of defendants is contrary, in its provision for the filing of an amended answer by defendants,

to the concession on the argument of said petition of defendants, made by Counsel Harpham in open Court, that defendants do not rely upon newly discovered evidence, and that nothing appears in this cause to warrant any permission to amend the answer herein, no other grounds having [33] been advanced by defendants in their said petition, as required by the authorities herein relied upon.

(k) That there is nothing in the patent in suit indicating the number of rungs which a ladder between second and third balconies must contain to be a ladder, and the omission of one or more such rungs from a given ladder would still leave the structure of a ladder *pro tanto*, and would enable use of the same for many purposes and constituting a continuing temptation to users to add other rungs for such further purposes as might be preferable or desired, if necessary, such ladder structures with certain rungs omitted being clearly contributory infringements.

Respectfully submitted,  
RAYMOND IVES BLAKESLEE,  
J. CALVIN BROWN,  
Solicitors and Counsel for Plaintiff.

Dated Los Angeles, Feb. 13, 1923. [34]

In the United States District Court, Southern  
District of California, Southern Division.

IN EQUITY—No. F.—89.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPES et al.,

Defendants.

### AFFIDAVIT OF SERVICE.

State of California,  
County of Los Angeles,—ss.

Alan Franklin being duly sworn according to law, says: That he is an attorney at law and connected with the offices of Blakeslee & Brown, solicitors and counsel for plaintiff in the above-entitled cause in Equity; that on the 14th day of Feb., 1923, he served a true and correct copy of the foregoing petition for rehearing of defendants' petition to vacate and set aside interlocutory decree, and permit defendants to file an amended answer and strike out answers to interrogatories propounded by plaintiff, etc., upon George E. Harpham, a solicitor and counsel for defendants Samson and Fitzgerald in the above-entitled cause, at his office in the Byrne Building, Los Angeles, California, by exhibiting said petition for rehearing, etc., to a person at said office and representing said counsel Harpham, or in charge of said office, and handing to said last

named person a true and exact copy of said petition for rehearing, etc.; that counsel Harpham himself was not to be found at his office for which reason said service was made upon the person representing himself to be in charge of said office.

ALAN FRANKLIN.

*Subscribed and sworn to before me this 15th day of February, 1923.*

Subscribed and sworn to before me this 15th day of Feb. 1923.

[Seal] J. CALVIN BROWN,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Sept. 27, 1925. [35]

[Endorsed]: In Equity—No. F—89. In The United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes, et al., Defendants. Petition for rehearing, notice and order. Received copy of the within papers this 13th day of Feb., 1923. Douglas L. Edmonds, Attorneys for Defendants, Copes and Hill. Filed Feb. 15, 1923. Chas. N. Williams, Clerk. By W. J. Tufts. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., and J. Calvin Brown, Solicitors for Plaintiff. (E). [36]



At a stated term, to wit: the January, A. D. 1923, term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Monday, the nineteenth day of February, in the year of our Lord one thousand nine hundred and twenty-three. Present: the Honorable BENJAMIN F. BLEDSOE, District Judge.

No. F.-89—EQUITY.

CHARLES HENRY PRAY,

Plaintiff,

vs.

W. B. COPEs et al.,

Defendants.

MINUTES OF COURT—FEBRUARY 19, 1923—  
ORDER DENYING MOTION.

This cause coming on at this time for hearing on complainant's petition for rehearing of defendants' petition to vacate and set aside interlocutory decree and permit defendants to file an amended answer and strike out answers to interrogatories, etc. Attorney Brown of Messrs. Blakeslee & Brown, appearing as counsel for the plaintiff and Geo. E. Harpham, Esq., appearing as counsel for Samson & Fitzgerald and Attorney Douglas L. Edmonds appearing as counsel for Copes & Hill and said Attorney Brown having argued in support of said

motion and Geo. E. Harpham, Esq., having argued in reply, it is by the Court ordered that said motion be denied. [37]

---

In the District Court of the United States in and for the Southern District of California, Southern Division.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

#### AMENDED ANSWER.

Now come the defendants M. J. Fitzgerald and W. A. Samson doing business under the fictitious name of National Fire Escape Ladder Company, and for themselves alone, and not for their codefendants, or either or any of them, in answer to the bill of equity for accounting and an injunction filed by complainant herein against these defendants and others, admit, allege and deny as follows:

##### I.

Deny that on the 15th day of June, 1920, or at any other time, or at all, complainant was the original or first inventor of a certain new or useful invention entitled "Fire Escape" more particularly described in the complainant's bill of equity on file herein.

##### II.

Deny that the same was a new or useful inven-

tion not known or used by others in this country before the invention thereof by your complainant, and deny that at the time of the application for patent therefor, as hereinafter alleged, the same had not been in public use, or on sale, in the United States for more than two years prior thereto, or that it had not been abandoned.

### III.

Defendants have not sufficient information or belief [38] to enable them to answer the allegations of paragraph IV of complainant's bill of equity, and on that ground deny that said letters patent were issued in due form of law under the seal of the Patent Office of the United States, signed by the Acting Commissioner of Patents or prior to the issuance thereof all proceedings were had or taken which were required by law to be had or taken to the issuance of letters patent for new or useful inventions, or at all.

### IV.

These defendants have not sufficient information or belief to enable them to answer the allegations of paragraph V of complainant's bill in equity, and basing their denial upon that ground, these defendants deny that since the issuance of said letters patent, or at all, complainant has been and is now the sole owner and holder thereof; deny that said complainant has practiced the invention described in said bill and deny that complainant has used large or any numbers of said fire escapes, and deny that any notice was given to the public at large that said device was covered by said or any letters patent.

## V.

Deny that within one year last past, in the Southern District of California, Southern Division, or at all, these defendants have jointly manufactured, used and sold or jointly manufactured or used or sold large or any number of fire escapes containing or embracing the invention described or patented in or by said letters patent or the claims thereof, and deny that they have infringed upon the alleged exclusive rights secured by complainant by said claims; deny that complainant has requested defendants to cease or desist from infringing upon said letters patent; deny that defendants are still manufacturing, using and selling, or manufacturing, or using or selling said patented invention, and deny that they threaten to so manufacture, use and sell or manufacture or use or sell them, and deny that unless [39] restrained by the Court they will continue to so manufacture or use or sell them.

## VI.

That all fire escape ladders made or sold by these defendants, or either of them, have been manufactured substantially in accordance with the device described in U. S. letters patent No. 1,140,708, issued to Julius Pauly May 25, 1915, which said patent is now owned by these defendants.

## VII.

That a fire escape ladder embodying the alleged invention of the complainant herein has been on sale by the F. P. Smith Wire and Iron Works of Chicago, Illinois, for twenty-five years last past

and is illustrated and partly described on page 37 in the catalogue of said iron works, published at Chicago, Illinois, in the year 1915, which catalogue, as these defendants are informed and believe and therefore allege, had and has a large circulation in the United States ever since the year 1915, and was copyrighted in the year 1915 by F. P. Smith; that fire escape ladders embodying the alleged invention of the complainant herein have been in public use in and about the city of Chicago for the past twenty-five years, but the places where used and the persons by whom used are not known to these defendants, and they ask that when ascertained the same may be inserted in their answer by amendment.

#### VIII.

Further answering complainant's bill, these defendants deny that any fire escape ladder made or used or sold by them or either of them, is any infringement upon any rights belonging to the complainant, and deny that any acts of these defendants which they did not have a right to do, have caused complainant any loss or damage whatever.

#### IX.

Deny that complainant has suffered great and irreparable or great or irreparable injury and damage or injury or damage, [40] and deny that defendants have realized large profits and gains, or large profits or gains in the sum of \$15,000, or any other sum, or at all.

WHEREFORE, these defendants pray that the complainant's bill be dismissed, that they may have

judgment for their costs and for such other and further relief as may be agreeable to equity.

G. E. HARPHAM,  
Attorney for Said Defendants.

United States of America,  
Southern District of California,—ss.

W. A. Samson, being first duly sworn, deposes and says: that he is one of the defendants in the within action; that he has read the above and foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. A. SAMSON.

Subscribed and sworn to before me this 24th day of February, 1923.

[Seal]

J. L. MURPHEY,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: F.-89—Equity. U. S. District Court, Southern District of California, Southern Division. C. H. Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Amended Answer of Samson and Fitzgerald. Received Copy of the Within Amended Answer This 26th Day of February, 1923. Reserving an Objection. Raymond Ives Blakeslee, J. Calvin Brown, Attorneys for Plaintiff. Filed Feb. 26, 1923. Chas. N. Williams, Clerk. By W. J. Tufts, G. E. Harpham, 338 Byrne Bldg., Attorney for Samson & Fitzgerald. [41]

In the District Court of the United States in and for the Southern District of California, Southern Division.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

ANSWER.

Now come the defendants W. B. Copes and J. E. Hill, copartners doing business under the fictitious name of Triangle Iron Works, and for themselves alone and not for their codefendants, or either of them, in answer to the bill of equity for accounting and injunction filed by complainant herein against these defendants and others, admit, allege and deny as follows:

I.

Deny that on the 15th day of June, 1920, or at any other time, or at all, complainant was the original or first inventor of a certain new or useful invention entitled "Fire Escapes," more particularly described in the complainant's bill of equity on file herein.

II.

Deny that the same was a new or useful invention not known or used by others in this country before the invention thereof by your complainant, and deny that at the time of the application for patent

therefor, as hereinafter alleged, the same had not been in public use, or on sale, in the United States for more than two years prior thereto, or that it had not been abandoned.

### III.

Defendants have not sufficient information or belief to enable them to answer the allegations of paragraph IV of [42] complainant's bill of equity, and on that ground deny that said letters of patent were issued in due form of law under the seal of the Patent Office of the United States, signed by the Acting Commissioner of Patents or prior to the issuance thereof all proceedings were had or taken which were required by law to be had or taken prior to the issuance of letters patent for new or useful inventions, or at all.

### IV.

These defendants have not sufficient information or belief to enable them to answer the allegations of Paragraph V of complainant's bill in equity, and basing their denial upon that ground, these defendants deny that since the issuance of said letters patent, or at all, complainant has been and is now the sole owner and holder thereof; deny that said complainant has practiced the invention described in said bill and deny that complainant has used large or any numbers of said fire escapes, and deny that any notice was given to the public at large that said device was covered by said or any letters patent.

### V.

Deny that within one year last past, in the South-



ern District of California, Southern Division, or at all, these defendants have jointly manufactured, used and sold or jointly manufactured or used or sold large or any numbers of fire escapes containing or embracing the invention described or patented in or by said letters patent or the claims thereof, and deny that they have infringed upon the alleged exclusive rights secured by complainant by said claims; deny that complainant has requested defendants to cease or desist from infringing upon said letters patent; deny that defendants are still manufacturing, using and selling, or manufacturing or using or selling said patented invention, and deny that they threaten to so manufacture, use and sell or manufacture or use or sell them, and deny that unless restrained by the Court they will continue to so manufacture or [43] use or sell them.

## VI.

That all fire escape ladders made or sold by these defendants, or either of them, have been manufactured substantially in accordance with the device described in U. S. letters patent No. 1,140,798 issued to Julius Pauly, May 25, 1915, which said patent is now owned by these defendants.

## VII

That a fire escape ladder embodying the alleged invention of the complainant herein has been on sale by the F. P. Smith Wire and Iron Works of Chicago, Illinois, for twenty-five years last past and is illustrated and partly described on page 37 in the catalogue of said iron works, published at Chicago, Illinois, in the year 1915, which cataloguss

as these defendants are informed and believe and therefore allege, had and has a large circulation in the United States ever since the year 1915, and was copyrighted in the year 1915 by F. P. Smith; that fire escape ladders embodying the alleged invention of the complainant herein have been in public use in and about the City of Chicago for the past twenty-five years, but the places where used and the persons by whom used are not known to these defendants, and they ask that when ascertained the same may be inserted in their answer by amendment.

#### VIII.

Further answering complainant's bill, these defendants deny that any fire escape ladder made or used or sold by them or either of them, is any infringement upon any rights belonging to the complainant, and deny that any acts of these defendants which they did not have a right to do, have caused complainant any loss or damage whatever.

#### IX.

Deny that complainant has suffered great and irreparable or great or irreparable injury and damage or injury or damage, and deny that defendants have realized large profits and gains, [44] or large profits or gains in the sum of \$15,000, or any other sum, or at all.

WHEREFORE, these defendants pray that the complainant's bill be dismissed, that they may have judgment for their costs and for such other and further relief as may be agreeable to equity.

DOUGLAS L. EDMONDS,  
Attorney for Said Defendants.

United States of America,  
Southern District of California,  
County of Los Angeles.

W. B. Copes, being first duly sworn, deposes and says: that he is one of the defendants in the within action; that he has read the above and foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. B. COPES.

Subscribed and sworn to before me this 23d day of February, 1923.

[Seal] DOUGLAS L. EDMONDS,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: F.-89-Equity. In the District Court of the United States, Southern District of California, Southern Division. Charles H. Pray, Complainant, vs. W. B. Copes, et al., Defendants. Answer of Defendants Copes and Hill. Received Copy of the Within Answer This 24th Day of February, 1923. Raymond Ives Blakeslee, J. Calvin Brown, Solicitors for Complainant. Filed Feb. 26, 1923. Chas. N. Williams, Clerk. By W. J. Tufts, Douglas L. Edmonds, Los Angeles, Cal. Telephones 60580 Main 1963, 1114 Stock Exchange Bldg. Attorney for Defendants Copes and Hill.  
[45]

In the District Court of the United States, for the  
Southern District of California, Southern Di-  
vision.

Hon. BENJAMIN F. BLEDSOE, Judge  
Presiding.

No. F.-89—IN EQUITY.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

TESTIMONY AND PROCEEDINGS ON  
TRIAL AND REHEARING.

Filed Aug. 27, 1923. Chas. N. Williams, Clerk.  
By Edmund L. Smith, Deputy Clerk.

Los Angeles, California, July 18, 1922.

Los Angeles, California, July 12, 1923.

JOHN P. DOYLE, Shorthand reporter and no-  
tary, Suite 507 Bankitaly International Build-  
ing, Los Angeles, California, Main 2896. [46]

INDEX.

Plaintiff's Witnesses:

Direct Cross Re-D Re-X

Robert R. Robertson . . . . .12 14 19

Defendants' Witnesses:

Direct Cross Re-D Re-X

William B. Copes . . . . .26 29

William A. Samson . . . . .31

[47]

In the District Court of the United States, for the  
Southern District of California, Southern Di-  
vision.

Hon. BENJAMIN F. BLEDSOE, Judge  
Presiding.

No. F.-89—IN EQUITY.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

TESTIMONY AND PROCEEDINGS, ON  
TRIAL AND REHEARING.

APPEARANCES:

For Complainant:

R. I. BLAKESLEE, Esq., and J. CALVIN  
BROWN, Esq.

For Defendant:

VICTOR H. KOENIG, Esq. (304 Union Oil  
Building).

Los Angeles, California, July 18, 1922. [48]

Los Angeles, California, Tuesday, July 18, 1922.

10 A. M.

The COURT.—Pray versus Copes.

Mr. BROWN.—Ready.

The COURT.—Proceed.

Mr. BROWN.—If your Honor please, this is an  
ordinary suit in equity involving the infringement

of a patent. I have here a copy of the patent in suit that was granted to Mr. Pray, and I would like to explain or to read it to your Honor if you care to follow the drawing.

The COURT.—I will read it first and then you may make any explanation you desire to make. (Examining patent.) All right.

Mr. BROWN.—Your Honor will see that the patent covers a structure having a second and third floor platform with a permanent connecting ladder there between and a slidable ladder with a counter-balance weight whereby the ladder may be moved upwardly or downwardly with a latch means at the second floor platform for holding the movable ladder in place until it is desired to use the same. Our case is based upon the patent and on the answers to plaintiff's interrogatories given by defendants.

Mr. KOENIG.—In the claims marked Nos. 2, 3 and 4 of the Pray patent the blue-print attached to the interrogatories of the plaintiff shows marked differences. As to No. 1, under Section 4920 of the Revised Statutes you have to give 30 days' notice to the plaintiff of certain defenses, and we were to put in the defense of our device having been in use for more than two years, but from the time of the setting of the case to the time of the trial was less than 30 days so that we couldn't do that. Does your Honor wish me to call attention to the differences in the construction of the ladders as shown by the blue-print and the Pray patent? [49]

The COURT.—Yes, if that has anything to do with the case.

Mr. KOENIG.—Yes. Now taking the Pray patent there, the first thing, the slidable ladder is inside of a stationary ladder; in the blue-print of the ladder used by the defendant the slidable ladder is on the outside, and the sheaves or walls in which the weight or counterbalance is attached for the balancing of the slidable ladder are attached to the platform and run on separate cables in the Pray patent while under our patent they are attached to the permanent or stationary ladder and run in the grooves of that ladder. Now these brackets that hold the stationary and slidable ladders together are attached to the permanent or stationary ladder in the Pray patent on the blue-print, while in our ladder they are shown to be attached to the slidable ladder and to move along the slidable ladder. The Pray patent shows the ladder to proceed through channel irons—

10, 11, 12 and 13—and no channel irons are used on the blue-print shown as used by the defendants. Now the blue-print will show, on the ladder used by the defendants, that the stationary ladder extends considerably below the second floor platform and the slidable ladder moves along that. The Pray ladder is between the second and third floor platforms only. The ladder as shown in the Pray patent is attached to an inside balcony between the second and third floor platforms through holes cut in the platform; the ladder used by the defendants is attached on the outside and moves up and down on the outside of the platform. If your Honor will notice the stop lever in the two patents, there is no resemblance between them at all.

The COURT.—What do you mean by no resemblance?

Mr. KOENIG.—The stop in the blue-print ladder is just an iron vertical bar and in the Pray patent it is a plug moving back and forth. 15 is the stop. The stop in the blue-print is just a vertical bar. We are operating under a patent given to one of the defendants on that bar. [50]

The COURT.—Those all seem to me to be substantial equivalents.

Mr. KOENIG.—But, your Honor, we contend, and hope to prove by the evidence, that slidable ladders counterbalanced have been used for years by fire departments and by painters and decorators and all sorts of people.

The COURT.—All right. Go on.

Mr. KOENIG.—And the only thing they could get patented would be their separate device there as set forth in their claims Nos. 2, 3, and 4.

I have a patent for a ladder that is used here, a copy of a patent granted to Julius Pauly, that is more in line with the ladder used by the defendants than the ladder of Mr. Pray, the plaintiff.

Mr. Brown.—If your Honor please, to make out a *prima facie* case I wish to offer the original patent in evidence as Plaintiff's Exhibit No. 1; and I also wish to introduce in evidence the answers to the interrogatories filed by the defendants, both the first and second sets, and the interrogatories themselves. The first set contains a blue-print. We objected to certain points in the first set of answers to the interrogatories and subsequently a second set was



filed by the defendants, the first set containing the blue-print, which blue-print was furnished in answer to our request for a blue-print of the defendants' structure, and you will note by the interrogatories and their answers that all of the defendants are connected and associated together so that one representation of the blue-print will be sufficient for all. And, if your Honor please, there are no affirmative defenses, but just general denials, and the defendants have admitted infringements by the interrogatories and the answers thereto.

The COURT.—(Examining papers.) All right.

Mr. BROWN.—Plaintiff rests, your Honor.

[51]

Mr. KOENIG.—We rest also, your Honor.

The COURT.—I don't see anything to do except to award a judgment for the plaintiff. They have a combination here that has been infringed, and while the various elements of it, many or perhaps all of them, have been in use for long periods of time, there is no evidence before the court that the combination has ever been in use. This thing of trying to differentiate between channel irons and angle irons might do for some things but not for a thing like this. Plaintiff will take a decree as prayed for.

(The hearing was thereupon adjourned.) [52]

In the District Court of the United States, for the  
Southern District of California, Southern Di-  
vision.

Hon. BENJAMIN F. BLEDSOE, Judge Presiding.  
No. F.-89—IN EQUITY.

CHARLES HENRY PRAY,  
Complainant,

vs.

W. B. COPES et al.,  
Defendants.

TESTIMONY AND PROCEEDINGS ON RE-  
HEARING.

APPEARANCES.

For Complainant: R. I. BLAKESLEE, Esq., and  
J. CALVIN BROWN, Esq.

For Defendants Samson and Fitzgerald: GEORGE  
E. HARPHAM, Esq.

For Defendants Copes and Hill: DOUGLAS L.  
EDMONDS, Esq. [53]

Los Angeles, California, Thursday, July 12, 1923,  
10 A. M.

The COURT.—Pray against Copes.

Mr. BROWN.—Ready for the plaintiff.

Mr. EDMONDS.—Ready for the defendants.

Mr. BROWN.—If the Court please, this matter  
comes on for rehearing and involves patent No.  
1,343,642, being a patent granted to C. H. Pray

for fire escapes. I would like to ask the court at this time that the proofs, proceedings, interrogatories propounded by the plaintiff and interrogatory answers upon the granting of the rehearing, as well as the exhibits, stand as part of the proofs in this present case and that the court enter an order on the record to that effect. It will save re-introducing them. The patent in suit, of which that is Exhibit 1, as the Court will recall, involves a structure having a first and second balcony with a permanent ladder there between and a movable ladder slidable upon a permanent ladder, there being counterbalance means for supporting the movable ladder in elevated or lowered position, as shown for instance in Fig. 1 in elevated position, and locked when in such position by a suitable lock, such as is shown in Fig. 6 of the drawing. The lock comprises an arm with a slidable member 15 adapted to engage one of the legs of the movable ladder D, a movement of the lever to the left of the showing in Fig. 6 permitting the ladder to move upon giving the same a slight push so that it may have momentum. This movement pulls upon the counterbalance weight which is associated with a cable 23, passing over suitable sheaves 26 and 27 on the second balcony B.

The claims, of which there are four, all relate to a fixed ladder incorporated with a movable ladder and counterbalance means connected to the ground ladder and manually [54] operated means normally supporting the ground ladder in elevated position. The elements of claim 1 appear in the re-

maining three claims, and it is the combination that we are resting upon in this suit for infringement, that is, the fire escape having two platforms, a vertical ladder, a slidable ground ladder, the counterbalance means and the manually operated means for supporting the ground ladder. The manually operated means of the patent relate to the means for releasing the ladder D, which is a movable ladder, from its elevated position so that it may be moved, that being the slide 15 of Fig. 6 as well as the arm 19 for permitting the slide to move. We rely upon the combinations of said claim. That, in substance, is our case and we contend that the defendants, and each of same, have infringed this structure and the claims of this patent in suit.

Mr. HARPAM.—If your Honor please, we rely solely upon the ground that the ladders constructed by the defendants are not infringements. As counsel for plaintiff has stated, the patent is for a combination of elements. Your Honor is well conversant with the law of patents that when any single element of a combination is omitted and no substitute introduced therefor the structure omitting such element is not an infringement of the letters patent. But there is one element that counsel left out of his combination which is provided for in the claims, which is means for retaining said ground ladder in close sliding engagement with the stationary ladder. That is one of the elements of the claims and in the defendants' structure the stationary ladder does not form any sup-

porting means for the sliding ladder nor are the two ladders in close sliding engagement nor is there any means for retaining the ground ladder in sliding engagement with the stationary ladder.

Mr. BROWN.—A stipulation was entered into, if the Court please, by and between counsels for the defendants Copes and Hill and Samson and Fitzgerald with the plaintiff, which is now on file, and which I desire to read to the Court: [55]

It is hereby stipulated by solicitors and counsel for plaintiff and defendants Fitzgerald and Samson that the annexed photographs are true, accurate and correct representations of what is therein purported to be shown, to wit, portions of the building of the Los Angeles Times at First Street and Broadway, Los Angeles, California, together with fire escape structures installed upon or in connection with said building, and that the ladder devices so installed and correctly shown in said photographs were sold and furnished to said Los Angeles Times and installed upon *its* said building by defendants M. J. Fitzgerald and W. A. Samson on or about the 24th day of January, 1922 (which date, as the Court will notice, is after the date of the patent), and paid for by the Times-Mirror Company on behalf of said Los Angeles Times February 15, 1922, in accordance with a bill or invoice, a true copy of which is attached hereto, and that said photographs and said copy of bill or invoice may be introduced into evidence on the retrial or rehearing of this cause without further proofs, and that all objections thereto as to competency or any objection

other than materiality or relevancy is and are specifically hereby waived by said defendants Fitzgerald and Samson; such attached photographs and copy to be receivable in evidence with the same force and effect as if proven.

And it is hereby separately stipulated by and between plaintiff and defendants J. E. Hill and W. B. Copes that the fire escape ladder devices hereinabove referred to and installed on said Los Angeles Times Building were manufactured by said defendants Copes and Hill at the order of said defendants Samson and Fitzgerald.

The structure of the photographs shows what we contend is a fixed ladder and a movable ladder slidable thereon with the counterbalance means for raising or lowering the movable [56] ladder as well as the locking means at the first or second balcony for holding the movable ladder in elevated position. I will ask at this time that the photographs be introduced into evidence as our exhibits, Exhibits 2 and 3 I believe, in accordance with the stipulation, and that the bill, the original of which is here on file, be introduced as Plaintiff's Exhibit 4. Mr. Robinson, will you please take the stand?

TESTIMONY OF ROBERT R. ROBINSON,  
FOR PLAINTIFF.

ROBERT R. ROBINSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BROWN.)

Q. (By The CLERK.) State your name, please.

(Testimony of Robert R. Robinson.)

A. Robert R. Robinson.

Q. (By Mr. BROWN.) Where do you reside, Mr. Robinson?

A. 1610 North Coronado Street, Los Angeles.

Q. What is your occupation?

A. Mechanical engineer and designing structures.

Q. Are you a graduate engineer? A. Yes, sir.

Q. Of what university?

A. Washington University, St. Louis.

Q. Are you familiar with general mechanical structures? A. Yes, sir.

Q. Such as ladders? A. Yes, sir.

Q. Have you viewed the Times Building and any ladders installed upon such building on the outside thereof? A. Yes, sir.

Q. When did you view them?

A. Yesterday evening and this morning.

Q. I show you what purports to be photographs of the installation of ladders on the Times Building and will ask if you viewed such ladders.

A. Yes, sir.

Q. I will ask also which is the movable ladder, if any? [57]

A. This ladder on the outside here.

Q. How is that marked?

A. The rungs are marked with a capital A.

Q. Is there any other ladder structure there?

A. Yes, the ladder structure shown at B.

Q. Where is that ladder structure attached to the building?

A. It is attached to the building below the third

(Testimony of Robert R. Robinson.)

story balcony and to the second story balcony and below the second story balcony.

Q. Did you observe whether or not the first ladder, the rungs of which are marked A, is slidable upon the second ladder marked B?

A. It is slidable upon the second ladder marked B.

Q. I will ask you to refer to the second photograph. Did you see the ladder in lowered position, the movable ladder? A. I did not.

Q. Mr. Robinson, how would you define a ladder? What is a ladder?

A. A ladder consists of steps or rungs mounted between two vertical supports. May I refer to a definition I have?

Q. State to the Court to what you are referring.

The COURT.—Surely everybody who has ever been outside of the house knows what a ladder is. Don't they?

Mr. HARPAM.—The Court will take judicial notice of what a ladder is, certainly.

The COURT.—There is no need of offering any evidence as to that.

Q. (By Mr. BROWN.) Then, Mr. Robinson, would you say the device marked B was or was not a ladder?

A. I would say that it was a ladder.

Mr. BROWN.—That is all. [58]

Cross-examination.

Q. (By Mr. HARPAM.) You would say that



(Testimony of Robert R. Robinson.)

it was a ladder from what portion of the ladder to what portion?

A. There are two portions of the ladder, or of the structure B, which I would say was a ladder. One portion extends below the balcony on the second floor and that consists of rungs spaced approximately the same distance as the rungs on the ladder A, which is the movable ladder. Then there is an additional portion of the ladder B above the top of ladder A when it is in its locked position above the sidewalk which I would say was a ladder, consisting of rungs of slightly greater spacing which would make it so that it could be used as a ladder above the top of ladder A.

Q. Are you familiar with fire escape structures?

A. I have seen them several times and examined them.

Q. You notice on that photograph another structure marked D, do you not?     A. Yes, sir.

Q. What is that?     A. That is a ladder.

Q. What is the purpose of that ladder marked D on the Times Building?

A. It is to go from the balcony on the second story to the balcony on the third story.

Q. Did you notice the balcony on the third story when you were examining the ladder?     A. Yes.

Q. Is there any means to go from that balcony to the ladder marked D?     A. Yes, sir.

Q. Is there any means on that balcony to go from that balcony to the structure that you term the ladder B?

(Testimony of Robert R. Robinson.)

A. The same means that there is to go from the second story to the ladder marked D, by stepping over the railing.

Q. You would have to step over the railing, would you not? [59]

A. You would have to do that on the second floor.

Q. You would have to step over it on the second?

A. Yes.

Q. You don't have to step over the railing to go to the ladder marked D, do you?

A. No, you do not.

Q. From your knowledge of fire escape structures is not the ladder marked D what is known as the stationary ladder which is designed for descent from the third balcony to the second balcony?

A. I would say so, yes.

Q. From your examination of the structures which you term ladders A and B is not the structure which you term ladder B designed primarily for the guidance of the ladder marked A in its movement up and down?

A. Yes, I would say so but I don't really see the use of the portion above the point above ladder A for that purpose.

Q. Isn't it there for the purpose of guiding the upper portion of the ladder A when it is in elevated position?

A. Yes, but it doesn't extend up as far as the second balcony. Therefore, what is the use of the upper portion of the two rungs?

(Testimony of Robert R. Robinson.)

Q. How many rungs are there in the structure as you examined it on the Times Building between the second and third balconies in the structure which you call ladder B? How many rungs are there?

A. There are two rungs I believe above the top-most portion of ladder A and one rung at least between that portion of the ladder and the railing of the balcony.

Q. (By the COURT.) Which balcony?

A. The railing of the balcony on the second floor.

Q. (By Mr. HARPHAM.) Would it be possible for a man to go up and down on those rungs from the second balcony to the third balcony or from the third balcony to the second?

A. It would be very easy to go down. [60]

Q. (By The COURT.) You could go down without any rungs at all or any structure?

A. Well, the rungs would serve as handholds to assist in going down. You couldn't very well hold on to a straight angle iron in going down.

Q. (By Mr. HARPHAM.) Have you examined the patent sued on in this action?

A. I have not.

Q. Let me ask you: would you consider these structures within the term ladders A and B to answer to this phraseology, a "ground ladder slidable on the permanent ladder and latched in normal elevated position with the rungs of both ladders horizontally aligned and positioned in close proximity to each other to form relatively wide steps"?

(Testimony of Robert R. Robinson.)

Would you consider the two structures to answer to that?

A. Yes, I would say that it does in its uppermost position on account of the fact that should something go wrong with the pulleys ladder B could be used to adjust the pulleys when the ladder A is in its locked position, or to put the rope on the pulleys.

Q. Do the rungs of the two ladders A and B between the balconies form aligned relatively wide steps?

A. I do not quite understand that. I wouldn't know exactly how to interpret that.

Q. You would understand what a wide step was, wouldn't you, the step of ladder A in proximity with the step of ladder B to form a relatively wide step?

A. No, I wouldn't say that they did that because they are slightly spaced relative to each other.

Q. You say that those rungs of ladder B are staggered with relation to the rungs of ladder A?

A. Yes, they are below the balcony of the second story.

Q. And also between the balcony of the second and third stories they are staggered, are they not, in relation to each other, between the two balconies, the second and third stories? [61]

A. I couldn't say about that.

Q. You can see from the picture, can you not?

A. The rungs on the ladder B are above the rungs on the ladder A between the second and third balconies.

(Testimony of Robert R. Robinson.)

Q. And they are in staggered relation, are they not?

A. No. They are entirely above. There are no rungs of ladder A above the bottom rung of ladder B as far as I can see with the exception of the rung which is down below and which I cannot tell just exactly where it is from the photograph.

Q. But those rungs are not wide, that is, they don't form wide steps, do they?

A. No, they do not.

Mr. HARPHAM.—That is all.

Redirect Examination.

(By Mr. BROWN.)

Q. Mr. Robinson, approximately how many, if any, rungs does it take to make a ladder? One or two or three or how many?

A. I would say one rung would make a ladder.

Q. Would not the staggering of the rungs between the ladder B and the one having the rungs marked A depend upon the relative position of the two ladders? A. Yes, it would.

Q. And if two of the rungs were in alignment would the step, or would it not, be relatively wide?

A. The step would be relatively wide, yes, if they could be put down so they could be in line.

Mr. BROWN.—That is all.

Q. (By The COURT.) I see one of the rungs on this stationary structure B but I don't see the other one. I see one of the rungs right at the top of the window. Where is the other one? Where does it come? [62]

(Testimony of Robert R. Robinson.)

Q. (By Mr. BROWN.) Please explain that to the Court.

A. There is one rung right across or above that shield-shaped structure. It runs right across that.

Q. (By The COURT.) Above what?

A. On the shield-shaped structure above the window.

Q. I see the one right below the coping over the window. Where is the other one?

A. It is slightly above that in the photograph between the lines of the bottom of the balcony on the third floor and the top of the window. It goes right across that shield ornament situated in between there.

Q. (By Mr. HARPHAM.) Isn't that the bottom of the sliding weight and not a rung?

A. No. The sliding weight is down here shown at E. There is a rung just—

Q. (By The COURT.) Right across the center of that shield? A. Yes.

Q. Yes, I see; it looks like it might be and covered by the weight when the weight is up apparently.

A. Well, the weight could go considerably above that.

Q. There are two of those in there. Now what is the distance between that upper balcony and the lower balcony?

A. I couldn't say exactly but I would say about 12 to 14 feet.

Q. 12 to 14 feet? A. Yes.

(Testimony of Robert R. Robinson.)

Q. Do you think any individual, the stairway D being there, would be tempted in order to escape a fire to climb down that structure?

A. No, I do not. For instance, if the rope should get stuck in the pulley he would have to climb up there when it is in locked position to loosen the rope.

Q. Oh, yes, I suppose. That would be for purposes of repair? A. Yes.

Q. But for the ordinary use for which the instrumentality [63] is mounted you would never suspect anybody would try to escape a fire by coming down that structure, would you?

A. No, I would not.

Q. (By Mr. BROWN.) Mr. Robinson, what are the rungs A and upon which ladder are they mounted?

A. They are mounted upon the slidable ladder.

The COURT.—Which photograph are you looking at? Some of them are mounted on the stationary ladder.

Mr. BROWN.—I am referring to A, Mr. Robinson.

The COURT.—They are all marked A—well, not all of them.

Q. (By Mr. BROWN.) I am referring to the ladder B, Mr. Robinson. How many rungs are there, referring to the second photograph, on ladder B below the two that you have just mentioned, at the bottom of the ladder I am referring to?

A. There are five rungs below.

(Testimony of Robert R. Robinson.)

Q. And those are on the fixed ladder, are they?

A. On the fixed ladder. They are marked with the upper A in the second photograph.

Q. Then there are more than two rungs on the fixed ladder? A. Yes.

Q. In the 14 feet?

The COURT.—No, no.

Q. (By Mr. BROWN.) Well, in how many feet, Mr. Robinson?

The COURT.—The rungs he has just referred to are below the platform at the bottom of the second story.

Q. (By Mr. BROWN.) And extend up beside the platform, do they not?

A. And extend approximately up to the railing on the second balcony.

Q. Below the railing I meant to say of the platform. The two rungs you have been talking about are above the railing, between the railing and the platform of the story above? A. Yes.

Q. (By Mr. HARPAM.) The photograph only shows one rung [64] marked A between the railing of the second balcony and the third balcony.

A. Refer to the first photograph.

Q. No; I mean the second one.

A. It is concealed in the second one owing to the fact that the weight is behind it and in the second photograph it shows it running across the shield.

Q. But it isn't marked A, is it, in the photograph?

A. No, it is not on this photograph. There is a rung there, though, because I noticed it in the structure that I examined down there.



Mr. BROWN.—Have you any further questions?

Mr. HARPHAM.—No further questions.

Mr. BROWN.—That is all. Did I understand the Court to enter the order permitting the exhibits in the former case to be included in this case?

The COURT.—I suppose so if there is no objection.

Mr. BROWN.—Is there any objection to the interrogatories propounded by us in the first case and your answers?

Mr. HARPHAM.—Your interrogatories and our last answers, or our amended answers to those interrogatories are all right, but not the original answers.

Mr. BROWN.—No, I understand that. The proofs, proceedings and interrogatories as well as the photographs under the stipulation and the bill, the original of which is on file, in the rehearing.

Mr. HARPHAM.—And all copies of patents that were offered in evidence or used.

Mr. BROWN.—Yes.

Mr. HARPHAM.—I don't see this patent to Pauly of May 25, 1915, No. 1,140,708.

Mr. BROWN.—I believe, if the Court please, that was mentioned first on the rehearing and not introduced into evidence. [65]

Mr. HARPHAM.—And likewise we don't find any title marking upon the Smith Catalog, which shows it was copyrighted in 1897, 1909, 1911, 1914 and 1915 by F. P. Smith. We desire only that portion of this catalog which is found on page 37.

Mr. BROWN.—We object to the introduction of the catalog into evidence on the ground that it hasn't been identified. There has been no foundation laid for its introduction. No deposition was taken as to the publication date. We cannot believe the title page nor can we refer to the page in view of the fact we don't know when it was published or where it came from. It should have been proved by deposition, if at all.

Mr. HARPAM.—The paper itself shows what it is.

The COURT.—I don't understand that a printed catalog proves itself. If that were true all you would need to do would be to go out and print a catalog.

Mr. HARPAM.—Well, that is true.

The CLERK.—Defendants' Exhibit "A."

Mr. BROWN.—It hasn't been introduced in evidence formally, has it?

Mr. HARPAM.—We will withdraw it but it was used before.

The CLERK.—Pauly patent No. 1,140,708 is defendants' Exhibit "A."

Mr. BROWN.—We will object to the introduction of that except to show state of the prior art inasmuch as it is not a certified copy under the rule.

Mr. HARPAM.—That is all it is offered for, is to show the state of the prior art.

The COURT.—It will be admitted for that purpose.

Mr. HARPAM.—We have the original of the

(Testimony of Wilson B. Copes.)

Pauly patent. I didn't know that. Under the stipulation, though, copies may be referred to and used with the same force and effect as originals, if certified.

Mr. BROWN.—Well, to show the state of the prior art. [66]

Mr. HARPHAM.—That is all we want, is to show the state of the prior art.

Mr. BROWN.—Are you through?

Mr. HARPHAM.—Yes, is that all of the testimony?

Mr. BROWN.—Yes, sir. Is that all you have?

Mr. HARPHAM.—Yes.

Mr. BROWN.—In argument, if the Court please, with reference to the Pauly structure—

Mr. HARPHAM.—One minute, Mr. Brown, please. I guess maybe we better put our proof on. Mr. Copes, be sworn.

## TESTIMONY OF WILSON B. COPES, FOR DEFENDANTS.

WILSON B. COPES, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

### Direct Examination.

(By Mr. HARPHAM.)

Q. (By the CLERK.) State your name, please.

A. Wilson B. Copes.

The COURT.—Does the plaintiff rest?

Mr. BROWN.—Yes, sir.

(Testimony of Wilson B. Copes.)

Q. (By Mr. HARPAM.) Mr. Copes, what is your business?

A. Manufacturer of ornamental iron.

Q. How long have you been engaged in that business? A. Three years.

Q. Where? A. 1461 Griffith Avenue.

Q. In Los Angeles, California? A. Yes, sir.

Q. Have you ever manufactured any of these fire escape ladders? A. Yes, sir.

Q. What style of ladder have you manufactured?

A. It was known as the Samson-Fitzgerald ladder.

Q. Is the ladder that you have manufactured shown in that picture of the Times structure?

A. Yes, sir. [67]

Q. Have you ever manufactured any other style of ladder other than that?

A. No, only stairways.

Q. Referring to this photograph of the Times structure which has been introduced in evidence which is the permanent ladder which extends from the second to the third balconies?

A. The permanent ladder?

Q. Yes, sir. How is it marked in that photograph? A. It is marked D I would say.

Q. What is the purpose of this structure that is marked B in that photograph?

A. That is a guide frame for the sliding ladder A.

Q. Have you ever manufactured any fire escapes comprising "two relatively spaced stationary plat-

(Testimony of Wilson B. Copes.)

forms and an intermediate stationary vertical ladder, a slidable ground ladder, means for retaining said ground ladder in close sliding engagement with the stationary ladder, counter-balance means connected to the ground ladder and manually operated means normally supporting the ground ladder in elevated position''? A. No, sir.

Q. In all the ladders which you have manufactured did the stationary ladder which extends from the second to the third balcony of the building constitute a guide for the sliding ground ladder?

A. No.

Q. Were they built in close proximity to each other? A. No, sir.

Q. When the sliding ladder and the stationary ladder between the second and third balconies were positioned were the rungs of the two ladders horizontally aligned and positioned in close proximity to each other to form relatively wide steps?

A. No, sir. There might have been a brace in there that accidentally might have been aligned to have made one step in the whole lay-out but they were not manufactured for that purpose. [68]

Q. And the structure you say marked B was simply a guide for the sliding ladder A?

A. Yes, sir.

Q. And not intended for use in ascending or descending from the second to the third balcony?

A. No, sir.

Q. These rungs that are marked there on the ladder as B, what is the purpose of those?

(Testimony of Wilson B. Copes.)

A. They were stiffeners for that frame.

Mr. HARPHAM.—That is all.

Cross-examination.

Q. (By Mr. BROWN.) What did you manufacture of the structures shown in the drawing?

A. A slidable ground ladder.

Q. And that is marked how?

A. That is marked A.

Q. And what else?

A. The frame that is marked B here to support the guides.

Q. And where did you place that frame?

A. That was placed from the second to the third floor.

Q. And its purpose was what?

A. For a guide for the sliding ladder A.

Q. Are there any rungs on that frame between the second and third balconies?

A. Only such rungs, or you might call them rungs, as are put in there for braces.

Q. And the rungs at the bottom of the frame, what are they for, referring to the second photograph?

A. They were prepared to go from the bottom balcony down.

Q. Were they attached to the frame?

A. Yes, sir.

Q. What else did you manufacture of that structure? A. Well, the counter-balance.

Q. That includes the cable and the balance, does it? [69] A. Yes, sir.

(Testimony of Wilson B. Copes.)

Q. And do you have sheaves in the structure?

A. Yes, sir.

Q. Where are they?

A. They are at the top of the frame B.

Q. Did you hold the ladder in elevated position, the movable ladder?

A. Yes, sir, with a locking bar up in the center of the frame. It wasn't in the bottom of the groove.

Q. And it engaged the movable ladder, did it?

A. Yes, sir.

Q. And held it in elevated position?

A. Yes, sir.

Q. And did the movable ladder slide upon the frames or was it guided by the frames in its movement? A. There were clips on the frame.

Q. And it guided the movable ladder? A. Yes.

Mr. BROWN.—That is all.

Mr. HARPHAM.—Mr. Samson.

TESTIMONY OF WILLIAM A. SAMSON, FOR  
DEFENDANTS.

WILLIAM A. SAMSON, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HARPHAM.)

Q. (By The CLERK.) State your full name, please.

A. William Andrew Samson.

(Testimony of William A. Samson.)

Q. (By Mr. HARPHAM.) Mr. Samson, you are one of the defendants? A. I am, yes, sir.

Q. What is your business?

A. My business is the soliciting of fire escape ladders. Brokerage business.

Q. Have you ever sold or made or used any fire escape structures which had a second and third floor platform and a [70] permanent ladder extending from the one platform to the other?

A. I have, yes, sir. I have sold them. I never manufactured them but I have had them manufactured.

Q. Have you sold any counter-balance ground ladders that were slidable on the permanent ladder?

A. No, sir.

Q. Have you ever sold any fire escape structures in which there was a permanent ladder and a sliding ground ladder with the rungs of both ladders horizontally aligned and positioned in close proximity to each other to form relatively wide steps?

A. I did not.

Mr. HARPHAM.—Take the witness.

Mr. BROWN.—No cross.

Mr. HARPHAM.—That is all.

Mr. BROWN.—That is all.

(Argument to the Court.)

The COURT.—Mr. Brown, your patent requires an intermediate stationary and vertical ladder between the two spaced stationary platforms?

Mr. BROWN.—Yes, sir.

The COURT.—And that the movable ladder shall



slide upon and in close proximity with that intermediate stationary ladder?

Mr. BROWN.—Yes, sir.

The COURT.—Now where is that in the defendants' device?

Mr. BROWN.—In the defendants' device we contend that the ladder B is a stationary ladder.

The COURT.—But they don't use that to go from one platform to the other. It is not intended for that, obviously, and even a man at a fire couldn't use it.

Mr. BROWN.—That may be very true but what is B if it is not a ladder?

The COURT.—Why it is only a support, obviously.

Mr. BROWN.—And it has rungs in the support.

The COURT.—No, it hasn't rungs in the support. It [71] has iron bars to prevent distortion. That is all it is.

Mr. BROWN.—But our contention is—or how many rungs does it take to make a ladder?

The COURT.—That depends on how far you are going. If you had a hundred-foot ladder it would take more than otherwise but your patent calls for two platforms with a stationary ladder between them and a movable ladder operating upon the stationary ladder. That is your device. There isn't anything to compare with it in the defendants' device. If there is I would like to have you point it out.

Mr. BROWN.—Aren't we allowed a range of

equivalence, if the Court please? Is this patent not to be sustained simply because they don't run the rungs all the way up but set them a certain distance from the top?

The COURT.—If your patent calls for a contrivance that enables you to go from one story to the other and they don't use that and don't intend to use it, then they haven't copied your device. They have got a stairway of their own.

Mr. BROWN. Yes, but they didn't install it.

The COURT.—It doesn't make any difference, they have a stairway of their own there which is used to go from the second to the third story, and you have installed this stairway for them to go up.

(Further argument by Mr. Brown and citation of authorities.)

The COURT.—It is an essentially different structure and I don't see any infringement so the complaint will be dismissed and defendants' counsel will prepare a decree.

Mr. BROWN.—Note an exception, please. [72]

State of California,

County of Los Angeles,—ss.

John P. Doyle and Ross Reynolds, being first duly sworn, each for himself deposes and says that he was employed to report in shorthand and transcribe, and did so report and transcribe, the testimony and proceedings taken and had in the foregoing entitled cause, No. F.-89—Equity, on July 18, 1922 and July 12, 1923, comprising the sheets or pages thereof on which his name appears, and that

the foregoing is a full, true and correct transcript and statement of said testimony and proceedings, each of said deponents so stating with respect to the portion thereof reported and transcribed by him as aforesaid.

JOHN P. DOYLE.  
ROSS REYNOLDS.

Subscribed and sworn to before me this 27th day of August, 1923.

[Seal] ERNEST E. CRIPPS,  
Notary Public in and for County of Los Angeles,  
State of Calif. [72½]

---

In the United States District Court for the Southern District of California, Southern Division.

No. F.-89—EQUITY.

CHARLES H. PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

FINAL DECREE DISMISSING BILL OF COMPLAINT.

BE IT REMEMBERED that the above-entitled cause came on regularly to be heard before the Court on July 12th, 1923, Hon. Benjamin F. Bledsoe, Judge.

The plaintiff was represented by J. Calvin Brown Esq., of the firm of Blakeslee & Brown.

The defendants W. B. Copes and J. E. Hill were represented by Douglas Edmonds, Esq., and the defendants W. A. Samson and M. J. Fitzgerald were represented by G. E. Harpham.

Testimony both oral and documentary was introduced by the respective parties and was considered by the Court.

Mr. Brown argued the case on behalf of the plaintiff. The Court did not desire argument from defendants and found that the fire escapes made and sold by the defendants were not an infringement on plaintiff's patent or of any of the claims thereof.

Wherefore by reason of the law and the premises the Court does now order, adjudge and decree that plaintiff's bill of complaint be and the same is hereby dismissed and it is further ordered that the defendants W. B. Copes and J. E. Hill recover their costs from plaintiff taxed at \$27.20 and that the defendants W. A. Samson and M. J. Fitzgerald recover their costs from plaintiff taxed at \$59.38.

Done in open court this 23 day of July 1923.

BENJAMIN F. BLEDSOE,

Judge.

Approved as to form pursuant to Rule 45.

BLAKESLEE & BROWN,

Attorneys for Plaintiff.

Per RAYMOND IVES BLAKESLEE. [73]

Decree entered and recorded Jul. 23, 1923.

CHAS. N. WILLIAMS,

Clerk.

By Edmund L. Smith,

Deputy Clerk.

[Endorsed]: No. F.-89-Equity. U. S. District Court, Southern District of California, Southern Division. Charles H. Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Final Decree Dismissing Bill of Complaint. Douglas Edmonds, Attorney for Copes & Hill. G. E. Harpham, Attorney for Samson & Fitzgerald. Filed Jul. 23, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. 12/256. [73½]

---

In the United States District Court for the Southern District of California, Southern Division.

No. F.-89—EQUITY.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEs et al.,

Defendants.

### ASSIGNMENT OF ERRORS.

Comes now the complainant above named and specifies and assigns the following as the errors upon which he will rely upon his appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree or order of this court filed July 23, 1923:

#### I.

That the District Court of the United States for the Ninth Circuit, Southern District of California, Southern Division, erred in entering any decree in favor of defendants.

## II.

That said court erred in dismissing complainant's bill of complaint and in not sustaining it.

## III.

That said court erred in allowing costs to defendants.

## IV.

That said court erred in not entering a decree on behalf of complainant as prayed for.

## V.

That said court erred in not finding and decreeing that complainant was entitled to an injunction as prayed for.

## VI.

That said court erred in not finding and decreeing that complainant was entitled to damages and profits as prayed for. [74]

## VII.

That said court erred in not finding and decreeing that complainant was entitled to costs as prayed for.

## VIII.

That said court erred in not finding and decreeing that the letters patent sued on are unanticipated, valid and infringed.

## IX.

That said court erred in not specifically finding, adjudging and decreeing that defendants and each of same have infringed the letters patent sued upon.

## X.

That said court erred in setting aside the answers of defendants to interrogatories, filed July 13, 1922.

XI.

That said court erred in setting aside the decree made, entered and recorded the 18th day of July, 1922, adjudging and decreeing the patent in suit valid and infringed.

XII.

That said court erred in granting rehearing to defendants after making, entering and recording such decree of July 18, 1922, and particularly in view of the laches of defendants as to alleged new defenses.

XIII.

That said court erred in denying complainant's petition for rehearing on defendants' petition for rehearing, which petition was filed February 15, 1923.

XIV.

That said court erred in finding that there was no infringement of the patent sued on in memorandum of opinion filed January 26, 1923, granting said defendants' petition for rehearing and in so finding *non obstante veredicto* or prior to [75] such rehearing and the consideration of proofs thereon.

XV.

That the court erred in finding, adjudging and decreeing that a ladder device minus one or more rungs is not a ladder responsive to the terms of the claims of the patent sued on.

XVI.

That the court erred in not ordering, adjudging and decreeing that the structures of defendants

as depicted in Plaintiff's Exhibits 2 and 3 are infringements of claims of the patent sued on.

XVII.

That said court erred in not ordering and decreeing that defendants came before the trial court with unclean hands on rehearing.

XVIII.

That the court erred in not finding and decreeing that the letters patent sued on are for a basic and important, if not pioneer, invention, and entitled to a broad and liberal construction and to all of the presumptions of validity attaching to such letters patent.

XIX.

That said court erred in not finding that defendants have failed to make out any defense whatsoever to the bill of complaint of complainant.

XX.

In order that the foregoing assignment of errors may be made of record, the complainant presents the same to the court and petitions that disposition may be made thereof in accordance with the laws of the United States thereunto provided.

WHEREFORE, complainant prays that the said decree and order of this court, filed and entered on July 23, 1923, that [76] the bill of complaint herein be, and that said bill of complaint was, dismissed, with costs to defendants, be reversed, in part and in whole, and that the complainant be awarded the relief prayed for, and that the defendants be restrained from the infringement complained of in said bill of complaint and that an



accounting be ordered of profits and damages accruing or arising from the infringement complained of in said bill of complaint, with costs to complainant, and that the United States District Court for the Southern District of California, Southern Division, be directed to enter a decree, accordingly, and to set aside in entirety the order and decree of July 23, 1923, with costs to complainant.

Dated Los Angeles, Cal., Aug. 24, 1923.

Respectfully submitted,

RAYMOND IVES BLAKESLEE,

J. CALVIN BROWN,

Solicitors and Counsel for Complainant.

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes, et al., Defendants. Assignment of Errors. Filed Aug. 24, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, J. Calvin Brown, 727-30 California Building, Los Angeles, Cal., Solicitors for Plaintiff. [77]

---

In the United States District Court for the Southern District of California, Southern Division.

No. F.-89—EQUITY.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPES et al.,

Defendants.

## PETITION FOR ORDER ALLOWING APPEAL.

Charles Henry Pray, complainant in the above-entitled cause, conceiving himself aggrieved by the order and decree filed and entered on the 23d day of July, 1923, whereby it was ordered, adjudged and decreed that complainant's bill of complaint be and the same was dismissed with costs to defendants, now comes Raymond Ives Blakeslee, Esq., and J. Calvin Brown, Esq., solicitors for complainant and petition said court for an order allowing complainant, Charles H. Pray to prosecute an appeal from said final order and decree and the decision of the Court thereupon, and from the whole thereof, to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which complainant shall give and furnish upon such appeal; and that a citation issue as provided by law, and that a certified transcript of the records, proceedings and papers upon which said decree was based be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, together with the exhibits on file in this case, in accordance with the rules in Equity promulgated by the Supreme Court

of the United States and the Statutes made and provided.

RAYMOND IVES BLAKESLEE,  
J. CALVIN BROWN,

Solicitors and Counsel for Complainant.

Dated Los Angeles, Cal., August 24, 1923. [78]

[Endorsed]: No. F.-89—In Equity. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes, et al., Defendants. Petition for Order Allowing Appeal. Filed Aug. 24, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., and J. Calvin Brown, Solicitors for Plaintiff. [79]

---

In the United States District Court for the Southern District of California, Southern Division.

No. F.-89—EQUITY.

CHARLES H. PRAY,

Complainant,

vs.

W. B. COPEs et al.,

Defendants.

### ORDER ALLOWING APPEAL.

In the above-entitled cause, the complainant having filed his petition for an order allowing an appeal from the order of this Court, made and entered July 23, 1923, together with assignment of

errors, now, upon motion of J. Calvin Brown, Esq., a solicitor for complainant,

IT IS ORDERED that said appeal be and hereby is allowed to complainant to the United States Circuit Court of Appeals for the Ninth Circuit, from the said order or decree made and entered by this court in this cause on July 23, 1923, that the bill of complaint of complainant herein be, and said bill of complaint of complainant was, dismissed, and further awarding costs to defendant, and that the amount of complainant's bond on said appeal be, and the same is hereby fixed at the sum of \$250.00.

IT IS FURTHER ORDERED, that upon the filing of said security a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, in accordance with the rules in Equity by the Supreme Court of the United States promulgated, and in accordance with the statutes made and provided, together with exhibits on file in this case, or duly certified copies thereof.

Dated Los Angeles, Cal., August 24, 1923.

WM. P. JAMES,  
Judge. [80]

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Order Allowing Appeal. Filed Aug. 24, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, J. Calvin

Brown, 727-30 California Building, Los Angeles,  
Cal., Solicitors for Plaintiff. [81]

---

In the United States District Court, Southern  
District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEES et al.,

Defendants.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That National Surety Company, a corporation organized and existing under the laws of the State of New York, and duly licensed to transact business in the State of California, is held and firmly bound unto W. B. Copes and J. E. Hill, doing business under the fictitious firm name of Triangle Iron Works, and M. J. Fitzgerald and W. A. Samson, doing business under the fictitious firm name of National Fire Escape Ladder Company, defendants in the above-entitled suit, in the penal sum of two hundred fifty dollars (\$250.00) to be paid to said W. B. Copes, J. E. Hill, M. J. Fitzgerald and W. A. Samson, their successors and assigns, which payment well and truly to be made the National Surety Company binds itself, its successors and assigns, firmly by these presents.

Sealed with the corporate seal and dated this 25th day of August, 1923.

The condition of the above obligation is such that whereas the said complainant of the above-entitled suit, is to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse an order or decree made, rendered and entered on the 23d day of July, 1923, by the District Court of the United States, for the Southern District of California, Southern Division, in the above-entitled cause, by which the bill of complaint was ordered, adjudged and [82] decreed to be dismissed, and was so dismissed, and in which costs were awarded to defendants.

NOW THEREFORE, the condition of the above obligation is such that if said Charles H. Pray shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the signature of said principal is hereunto affixed and the corporate name of said surety is hereunto affixed and attested by its duly authorized attorneys-in-fact, and the seal of said surety is hereunto affixed, at Los Angeles, California, this 25th day of August, 1923.

The first year's premium on this bond is \$10.00.

NATIONAL SURETY COMPANY.

[Seal]

By CATESBY C. THOM,

Attorney-in-fact.

CHARLES H. PRAY. (Seal)

State of California,  
County of Los Angeles,—ss.

On this 25th day of Aug. in the year one thousand nine hundred and 23 before me, Nadine Girard, a notary public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared Catesby C. Thom, known to me to be the duly authorized attorney-in-fact of National Surety Company, and the same person whose name is subscribed to the within instrument, as the attorney-in-fact of said company, and the said Catesby C. Thom acknowledged to me that he subscribed the name of National Surety Company thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

NADINE GIRARD,

(Attorney-in-fact.)

Notary Public in and for Los Angeles County,  
State of California. [83]

Approved Aug. 25, 1923.

WM. P. JAMES,

District Judge.

Examined and recommended for approval as provided in Rule 29.

J. CALVIN BROWN,

Atty. for Plf. Appellant.

[Endorsed]: No. F.-89—In Equity. In the United States District Court, Southern District of

California, Southern Division. Charles H. Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Bond on Appeal. Filed Aug. 24, 1923. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Raymond Ives Blakeslee, J. Calvin Brown, 727-30 California Building, Los Angeles, Cal., Solicitors for Plaintiff. [84]

---

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Plaintiff-Appellant,

vs.

W. B. COPES et al.,

Defendants-Appellees.

ORDER RE MODIFICATION OF STIPULATION RE TRANSCRIPT OF RECORD.

Sufficient cause hereunto appearing, it is hereby ORDERED:

That the stipulation as to transcript of record on appeal and exhibits in the above-entitled cause heretofore made on August 27, 1923, by and between the parties to the above-entitled cause, is hereby modified as to paragraph II thereof to read as follows, to wit:

That all the above papers and paper exhibits shall be forthwith transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth



Circuit, at San Francisco, California, at the expense of plaintiff, for use on said appeal and that the same shall be printed at the expense of the plaintiff and under the supervision of the Clerk of the Circuit Court of Appeals for the Ninth Circuit as provided in Rule 23.

Printed copies of the transcript shall be furnished to counsel, pursuant to the rules of said Circuit Court of Appeals for the Ninth Circuit.

BLEDSOE,

U. S. District Judge, So. Dist. Cal., So. Div. [85]

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Plaintiff-Appellant, vs. W. B. Copes et al., Defendants-Appellees. Order. Filed Jul. 2, 1924. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Raymond Ives Blakeslee and J. Calvin Brown, 727-30 California Building, Los Angeles, Cal., Solicitors for Plaintiff-Appellant. [86]

Copy.

In the United States District Court, Southern  
District of California, Southern Division.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Complainant,

vs.

W. B. COPEs, and J. E. HILL, Doing Business  
Under the Fictitious Firm Name of TRI-  
ANGLE IRON WORKS, M. J. FITZ-  
GERALD and W. A. SAMSON, Doing  
Business Under the Fictitious Firm Name  
of NATIONAL FIRE ESCAPE LADDER  
COMPANY,

Defendants.

STIPULATION RE TRANSCRIPT OF REC-  
ORD.

Subject to the approval of the Court, which ap-  
proval is hereby requested, all the parties to the  
above-entitled suit by their respective solicitors  
and counsel, stipulate and agree as follows:

I.

To save cost and expense, facilitate said ap-  
peal and present the issues as presented to this  
court, it is stipulated and agreed that the transcript  
of record on appeal in the above-entitled suit,  
shall consist of a true copy of each of the follow-  
ing papers in suit, to wit:

(a) A *verbatim* copy of all testimony and pro-  
ceedings during the taking thereof taken and had

in open court as the same appears in the transcript thereof furnished by the stenographic reporter, including a copy of each and all exhibits;

(b) The bill of complaint herein;

(c) The answer herein filed February 27, 1922;

(d) Notice of motion and motion requiring defendants to answer certain interrogatories and for order striking out answer of defendants filed April 5, 1922;

(e) Order of Court dismissing plaintiff's motion to strike out answer of defendants—entered April 10, 1922; [87]

(f) Notice of motion and motion for an order compelling defendants to answer certain interrogatories—filed April 19, 1922;

(g) Interlocutory decree—entered July 18, 1922;

(h) Notice of motion and motion to vacate interlocutory decree and affidavit thereon—filed August 14, 1922;

(i) Motion to vacate interlocutory decree, motion taken under submission by order of court Sept. 25, 1922;

(j) Order setting aside interlocutory decree and permitting defendants to file amended answer upon payment of \$200.00 as terms—entered January 26, 1923;

(k) Memorandum of opinion of the Court—filed January 26, 1923;

(l) Order vacating injunction and setting aside decree—filed February 5, 1923;

(m) Notice of petition and petition for rehearing defendants' petition to vacate, etc., interlocu-

tory decree and permitting defendants to file amended answer, etc.—filed February 15, 1923:

(n) Order of Court denying plaintiff's petition to rehear and to vacate order setting aside interlocutory decree and granting leave to file amended answer—entered February 19, 1923;

(o) Amended answer of defendants Copes and Hill—filed February 26, 1923;

(p) Amended answer of Samson and Fitzgerald—filed February 26, 1923;

(q) Final decree;

(r) Petition for order allowing appeal—filed August 24, 1923;

(s) Assignment of errors—filed August 24, 1923;

(t) Order allowing appeal—filed August 24, 1923;

(u) Citation to defendants issued August 25, 1923—filed August —, 1923;

(v) Complainant's bond on appeal approved and filed August 25, 1923; and, [88]

(w) This stipulation.

## II.

This being an appeal taken under the Act of February 13, 1911, it is further stipulated and agreed that an order be entered permitting complainant to withdraw all the above papers and paper exhibits upon giving the clerk of this court an identifying receipt therefor complainant hereby stipulating and agreeing to return each and all said papers and paper exhibits to the clerk of this court immediately after use of the same solely for the purpose of

producing and printing copies thereof for said Transcript of Record on Appeal.

Dated Los Angeles, Cal., August 27, 1923.

\_\_\_\_\_,  
\_\_\_\_\_,  
Solicitors for Complainant.

\_\_\_\_\_,  
\_\_\_\_\_,  
Solicitors for Defendants.

[Endorsed]: Chas. H. Pray vs. W. B. Copes et al. Stipulation. Filed August 28, 1923. Chas. N. Williams, Clerk. R. S. Zimmerman, Deputy. [89]

---

In the District Court of the United States, Southern District of California, Southern Division.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPEs et al.,

Appellee.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Chas. N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 90 pages, numbered from 1 to 90, inclusive, to be the transcript of record on appeal in the above-entitled cause, and that the same has been

compared and corrected by me and contains a full, true and correct copy of the *alias* citation bill in equity for accounting and injunction, answer of W. B. Copes and J. E. Hill, motion and notice thereof to strike out answer of defendants, order of April 10, 1922, denying motion to strike, motion and notice thereof to answer interrogatories, interlocutory decree, affidavit on motion to set aside decree, order permitting defendants to file amended answer, memorandum opinion, order setting aside interlocutory decree, notice and petition for rehearing, order denying petition for rehearing, amended answer of M. J. Fitzgerald and W. A. Samson, amended answer of W. B. Copes and J. E. Hill, reporter's transcript of testimony and proceedings on trial and rehearing, final decree dismissing bill of complaint, assignment of errors, petition for order allowing appeal, order allowing appeal, bond on appeal, order that papers and exhibits be transmitted to the clerk of the Circuit Court of Appeals, stipulation as to contents of record on appeal.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to \$26.15, and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 11th day of July, in the year of our Lord one thousand nine hundred and twenty-four,

and of our Independence the one hundred and forty-ninth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America; in and for the Southern District of California.

By R. S. Zimmerman,  
Deputy.

---

[Endorsed]: No. 4285. United States Circuit Court of Appeals for the Ninth Circuit. Charles H. Pray, Appellant, vs. W. B. Copes and J. E. Hill, Doing Business Under the Fictitious Firm Name of Triangle Iron Works, and M. J. Fitzgerald and W. A. Samson, Doing Business Under the Fictitious Firm Name of National Fire Escape Ladder Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed July 15, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPES et al.,

Appellee.

ORDER EXTENDING TIME TO AND INCLUDING JULY 15, 1924, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 15th day of July, 1924. And no further extensions will be granted.

BLEDSON,

United States District Judge, Southern District of California.

[Endorsed]: In Equity—No. F.-89. in the United States Circuit Court of Appeals, Ninth Cir. Charles Henry Pray, Plaintiff, vs. W. B. Copes et al., Defendants. Order Extending Time to File Record July 15, 1924, etc. Filed Jun. 20, 1924. F. D. Monckton, Clerk.



In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPES et al.,

Appellees.

ORDER EXTENDING TIME TO AND INCLUDING JUNE 20, 1924, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 20th day of June, 1924.

Dated March 21, 1924.

WM. P. JAMES,

United States District Judge, Southern District of California.

[Endorsed]: In Equity—No. F.-89. In the United States Cir. Court of Appeals, Ninth Judicial Circuit. Charles Henry Pray, Appellant, vs. W. B. Copes et al., Appellees. Order Extending Time to Record June 20, 1924, to File, etc. Filed Mar. 24, 1924. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPES et al.,

Appellee.

ORDER EXTENDING TIME TO AND INCLUDING MARCH 20, 1924, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 20th day of March, 1924.

BLEDSON,

United States District Judge, S. D. Cal.

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Appellant, vs. W. B. Copes et al., Appellees. Order Extending Time to Record to March 20, 1924, to File. Filed Jan. 21, 1924. Charles N. Williams, Clerk.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Rule Under Subdivision 1 of Rule 16 Enlarging Time to and Including —, 192—, to File Record and Docket Cause. Filed Jan. 23, 1924. F. D. Monekton, Clerk.

---

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPES et al.,

Appellee.

ORDER EXTENDING TIME TO AND INCLUDING JANUARY 20, 1924, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 20th day of January, 1924.

December 19, 1923.

WM. P. JAMES,  
United States District Judge, S. D. Cal.

[Endorsed]: No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Appellant, vs. W. B. Copes et al., Appellee. Order Extending Time to Record to January 20, 1924.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including January 20, 1924, to File Record and Docket Cause. Filed Dec. 21, 1923. F. D. Monckton, Clerk.

---

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

IN EQUITY—No. F.-89.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPEs et al.,

Appellee.

ORDER EXTENDING TIME TO AND INCLUDING DECEMBER 20, 1923, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged

and extended to and including the 20th day of December, 1923.

BLEDSON,

United States District Judge, Southern District of California.

[Endorsed]: In Equity—No. F.-89. In the United States District Court, Southern District of California, Southern Division. Charles Henry Pray, Appellant, *vs.* W. B. Copes et al., Appellees. Order Extending Time to Record December 20, 1923, to File, etc.

No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including December 20, 1923, to File Record and Docket Cause. Filed Nov. 22, 1923. F. D. Monckton, Clerk.

---

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

F.-89—EQ.

CHARLES HENRY PRAY,

Appellant,

*vs.*

W. B. COPES et al.,

Appellee.

ORDER EXTENDING TIME TO AND INCLUDING NOVEMBER 20, 1923, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 20th day of November, 1923.

WM. P. JAMES,  
United States District Judge, Southern District  
of California.

[Endorsed]: No. F.-89. In the United States Circuit Court of Appeals, Ninth Circuit. Charles Henry Pray, Appellant, vs. W. B. Copes et al., Appellees. Order Extending Time to Record November 20, 1923, to File, etc. Filed Oct. 26, 1923. F. D. Monckton, Clerk.

---

In the United States Circuit Court of Appeals,  
Ninth Judicial Circuit.

F.-89—EQUITY.

CHARLES HENRY PRAY,

Appellant,

vs.

W. B. COPES et al.,

Appellees.

ORDER EXTENDING TIME TO AND INCLUDING NOVEMBER 20, 1923, TO FILE RECORD AND DOCKET CAUSE.

Good cause appearing therfor,

IT IS HEREBY ORDERED that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 20th day of November, 1923.

Sep. 19, 1923.

WM. P. JAMES,

United States District Judge, Southern District of California.

[Endorsed]: No. F.-89. In the United States Circuit Court of Appeals for the Ninth Judicial Circuit. Charles Henry Pray, Appellant, vs. W. B. Copes et al., Appellees. Order Extending Time to November 20, 1923, to File Record, etc. Filed Sep. 21, 1923. F. D. Monckton, Clerk.

No. 4285. United States Circuit Court of Appeals for the Ninth Circuit. Refiled Jul. 15, 1924. F. D. Monckton, Clerk.

